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E. ROBERT SEAVER

In the Supreme Court
of the United States

OCTOBER TERM, 1970

No. 510

E. B. WEBER, E. A. SCHLECHT, ROBERT J. CALEY, NORMAN L. BUCKNER, CARL M. HALVORSON, ERIC HOFFMAN, J. M. STEINMULLER, JR., and G. O. GUEDE, as Trustees for the Oregon-Washington Carpenters-Employers Health and Welfare, Pension, and Apprenticeship and Training Trust Funds,

Petitioners,

v.

WENDELL HIATT,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment and decision of the United States Court of Appeals for the Ninth Circuit entered herein on May 6, 1970.

OPINION BELOW

The United States District Court for the District of Oregon proceeding of November 19, 1968, granting the motion to dismiss for lack of jurisdiction, is unreported and set out in Appendix F, p. A126, infra.

The United States Court of Appeals for the Ninth Circuit Memorandum Decision of May 6, 1969 affirming the judgment of the District Court is unreported and set out in Appendix G, p. A127, infra.

Both of the above decisions rely upon *Bernard Hiatt* v. *Schlecht*, 400 F.2d 875 (9th Cir. 1968) which is set out in Appendix H, p. A129, infra.

JURISDICTION

The judgment and decision of the United States Court of Appeals for the Ninth Circuit, was entered into on May 6, 1970. This court has jurisdiction to review the judgment herein by writ of certiorari pursuant to 28 U.S.C. § 1254 (1).

QUESTION PRESENTED

Does a district court have jurisdiction of a civil action arising under an Act of Congress regulating commerce under Sections 301(a) and 302(c)(5) of the Labor-Management Relations Act, as amended (29 U.S.C. Secs. 185(a) and 186(c)(5)), consisting of a suit by Trustees of a Trust Fund against an em-

ployer (Wendell Hiatt, respondent, who is bound by contracts between labor unions and employers in the construction industry, which is an industry affecting commerce because:

1) The contracts involved are labor agreements and trust agreements between labor unions in the States of Oregon and Washington and employers in the States of Oregon and Washington.

2) The labor organizations which are parties to these agreements represent employees in an industry (building and construction) affecting commerce.

3) The employers, who are parties to these contracts herein involved, are engaged in activities which affect commerce.

4) The subcontractors of the respondent (Hiatt) use a substantial amount of out-of-state products in the performance of their contracts with him.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent portions of the Commerce Clause of the United States Constitution, Article I, Section 8, Paragraph 2.

Sec. 1337, Judicial Code and Judiciary (28 U.S.C. Sec. 1337).

Sec. 501 (1), Labor-Management Relations Act, as amended (29 U.S.C. Sec. 142(1)).

Sec. 2(6), National Labor Relations Act, as amended (29 U.S.C. Sec. 152(6)).

Sec. 2(7), National Labor Relations Act, as amended (29 U.S.C. Sec. 152(7)).

Sec. 301(a), Labor-Management Relations Act, as amended (29 U.S.C. Sec. 185(a)).

Sec. 302(c)(5), Labor-Management Relations Act, as amended (29 U.S.C. Sec. 186(c)(5)).

are set out in Appendix I, p. A134, infra.

STATEMENT OF CASE

On February 7, 1962, Wendell Hiatt (hereinafter respondent), a general contractor engaged in the construction of home and apartment units, entered into an Oregon State Building and Construction Trades Council agreement in which he agreed, inter alia, to:

> "Abide by all of the terms and conditions of the agreements of the respective crafts employed, including wages, hours, working conditions, health and welfare benefits, pension benefits and other fringe benefits and hereby adopts such Trust and Fund Agreement of each respective union."

(App. B, Pl. Ex. 8, p. A97, infra). One of these respective unions, the Carpenters Unions covering the State of Oregon and five and one-half counties of Southwest Washington, is signatory to trust agreements with certain named Employer Associations in the State of Oregon and the State of Washington, designated Oregon-Washington Carpenters-Employers Health and Welfare Trust Fund as of January 1, 1956, amended November 5, 1956. (App. B, Pl. Ex. 1,

p. A14, infra); Oregon-Washington Carpenters-Employers Apprenticeship and Training Trust Fund entered into as of December 28, 1965 (App. B, Pl. Ex. 3, p. A42, infra), and Oregon-Washington Carpenters-Employers Pension Trust Fund entered into as of December 19, 1962 (App. B, Pl. Ex. 2, p. A28 infra).

The agreements of this craft to which respondent bound himself by his execution of the State Building and Construction Trades Agreement are Carpenters Labor Agreement, 1962-1963-1964, Carpenters, Millwrights and Piledrivers, Oregon-Southwest Washington (App. B, Pl. Ex. 5, p. A56 infra); Carpenters Labor Agreement, 1965-1966-1967, Carpenters, Millwrights and Piledrivers, Oregon-Southwest Washington (App. B, Pl. Ex. 6, p. A69, infra) and Carpenters Labor Agreement, 1968-1969-1970, Carpenters, Millwrights, and Piledrivers, Oregon-Southwest Washington (App. B, Pl. Ex. 7, p. A80, infra). These agreements are between three employer associations in Oregon, one in Washington and four Union identities—three in Oregon, one in Washington (App. B., Pl. Ex. 7, p. A80, infra). The employer associations represent many general contractors in the Building and Construction Industry, including over one hundred ninety of the Oregon-Columbia Chapter, Associated General Contractors (App. B, Pl. Ex. 7, p. A93, infra). The four Union identities represent 40 Carpenter Local Unions in the States of Oregon and Washington (App. B, Pl. Ex. 7, p. A80, infra).

Respondent is a general contractor engaged in the

building and construction industry and he employs carpenters to do work on construction job (App. E, p. A124, infra). In 1967, these construction jobs had a value in excess of $200,000 (App. D, p. A114, infra).

In the construction of houses and apartment units respondent subcontracts out various electrical, plumbing and carpet work to independent contractors. In performance of their subcontracts with respondent, these contractors installed materials amounting to $21,514.00 in 1967 and $24,655.60 in 1968, exclusive of labor, all manufactured and originating outside the State of Oregon (App. E, p. A124, infra).

The Trustees of the Oregon-Washington Carpenters-Employers Health and Welfare, Pension and Apprenticeship and Training Trust Funds (hereinafter "petitioner") filed suit in the United States District Court for the District of Oregon against respondent. Petitioners sought specific performance of certain collective bargaining agreements (App. B, Pl. Exs. 5, 6, 7, 8, pp. A56, A69, A80, A96, infra) and Trust Fund Agreements (App. B, Pl. Exs. 1, 2, 3, pp. A14, A28, A42, infra) requiring monthly contributions by respondent to the petitioner Trust Funds for the benefit, inter alia, of the respondent's employees.

Petitioners based the jurisdiction of the district court on Section 301(a) of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 301(a)), contending that respondent was an employer engaged in commerce or in an industry affecting commerce within the meaning of Sections 2(6), 2(7) National

Labor Relations Act, as amended, (29 U.S.C. Secs. 152(6) and 152(7)), 301(a), 302(c) (5) and 501 (1) of the Labor-Management Relations Act, as amended (29 U.S.C. Secs. 185(a), 186(c)(5) and 142(1) (App. I, p. A134, infra). Petitioners also contended that respondent's employees are represented by labor organizations (Oregon State Building and Construction Trades Council (App. B, Pl. Ex. 8, p. A96, infra) and United Brotherhood of Carpenters and Joiners of America District Councils and Local Unions (App. B, Pl. Exs. 5, 6, 7; pp. A56, A69, A80, infra) who represent "employees in an industry affecting commerce" under Section 301(a) of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 185(a)). App. I, p. A134, infra.

Based on the ruling in *Bernard Hiatt* v. *Schlecht, et al*, 400 F.2d 875 (9th Cir. 1968) (App. H, p. A129, infra), the district court ruled that the respondent was not engaged in interstate commerce or in an industry affecting commerce and the court therefore lacked jurisdiction to hear the cause (App. E, p. A123, infra, App. F, p. A126, infra).

On May 6, 1970, the United States Court of Appeals for the Ninth Circuit affirmed the district court's decision (App. G, p. 127, infra). From that decision, petitioners are prosecuting this appeal.

REASONS FOR GRANTING THE WRIT

I.

The Decision Below is in Square Conflict with Jurisdiction Principles Clearly and Consistently Established by Decisions of This Court

A.) The U. S. District Court has jurisdiction of the subject matter in this case because Title 28 U.S.C. Sec. 1337 clearly states that

> "(t)he district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce . . ."

This Court has held the National Labor Relations Act is a law "regulating commerce," *NLRB* v. *Jones and Laughlin Steel Corp.*, 301 U.S. 1 (1937); *Capital Service, Inc.* v. *NLRB*, 347 U.S. 501 (1954).

In *Avco Corp.* v. *Aero Lodge 735*, 390 U.S. 557 (1968), the U. S. Supreme Court held Title 28 U.S.C. Sec. 1337 gave U. S. District Courts original jurisdiction of actions involving Sec. 301 LMRA (29 U.S.C. Sec. 185). The present case is a Sec. 301 action and, according to Title 28 U.S.C. Sec. 1337 and the Court's decision in *Avco*, the U S. District Court of Oregon must take original jurisdiction of this civil action.

B.) Jurisdiction under the Labor-Management Relations Act, as amended (hereinafter LMRA) is intended to extend to the fullest limits permissible under the commerce-clause where the LMRA (29

U.S.C. Sec. 185(a)) speaks in terms of application to an employer in an "industry affecting commerce." *NLRB* v. *Reliance Fuel Oil Co.*, 371 U.S. 224 (1963).

The Court has established applicable jurisdiction principles in cases involving the National Labor Relations Board. These cases are an excellent guide because there are two basic characteristics which are the same in both Board cases and Section 301 cases:

1) The jurisdiction question is the same—does this industry affect commerce, thereby coming within the LMRA?
2) Both the Board and the federal courts rely on basically the same language in establishing jurisdiction. (See Sections 2(6) and 2(7) NLRA, and 501(1), LMRA.)

The existence of an employer in an industry-affecting commerce is not measured solely by the activities of an employer such as Wendell Hiatt, but whether his situation is similar to others which, if left unchecked, may become far-reaching in its effect on interstate commerce. *Polish National Alliance of the United States* v. *NLRB*, 322 U.S. 643, 64 S. Ct. 1196 (1944).

Wendell Hiatt operates within the building and construction industry, which is nationwide in scope. This industry involves extensive flow of materiel across state boundaries and a labor dispute would burden this flow substantially. Therefore, the building and construction industry is an industry-affecting commerce.

Petitioners submit it is this "industry-affecting commerce" aspect of jurisdiction under Sec. 301 that the U. S. Court of Appeals did not properly consider in its opinion in *Bernard Hiatt v. Schlecht*, 400 F.2d 875 (9th Cir. 1968) (App. H, p. A129, infra). The court set forth eight bases for finding jurisdiction and stated direct purchases of out-of-state goods in substantial quantities were often required to find jurisdiction. Neither the cases cited nor the clear intent of Congress support this conclusion.

As the Court stated in *Wickard* v. *Filburn*, 317 U.S. 111 (1942):

> "But even if appellee's activity be local, . . . it may still, whatever its nature, be reached by congress if it exerts a substantial economic effect on interstate commerce and this is irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect.'"

Wendell Hiatt's subcontractors use a large amount of out-of-state manufactured products in the performance of their contracts (App. E, p. A124, infra). Although the purchase of these products may be "indirect," they still exert a substantial economic effect on interstate commerce.

Furthermore, the cases[1] cited in *Bernard Hiatt* for requiring direct purchases state only that because direct purchases did exist, they could be used to find

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[1] *Liner* v. *Jafco, Inc.*, 375 U.S. 301 (1964), *NLRB* v. *Inglewood Park Cemetery Ass'n.*, 355 F.2d 448 (C.A. 9, 1966).

jurisdiction. However, those decisions do not insist upon a direct purchase as the only basis for jurisdiction.

Not only is respondent in an "industry-affecting commerce," but his carpenter-employees are represented by "a labor organization representing employees in an industry affecting commerce . . ." LMRA (29 U.S. Sec. 185(a)). The labor organizations representing Hiatt's carpenter-employees under the collective bargaining agreement binding him to make contributions to the petitioner Trust Funds represent employees both in Oregon and Southwest Washington (App. B, Pl. Exs. 5, 6 and 7, infra). Furthermore, these labor organizations are affiliated with the nationwide United Brotherhood of Carpenters and Joiners of America, whose representative is also a signatory to the agreement. (See for instance, App. B, Pl. Ex. 6, p. A70, infra.) Contributions to the petitioner Trust Funds and benefits paid out to eligible employees of necessity cross state lines. The transaction of business between the United Brotherhood of Carpenters and Joiners from Washington, D.C. with its affiliate labor organizations throughout the country requires interstate operation. Under these circumstances, for example, a strike by the labor organizations representing Hiatt's carpenter-employees would seriously curtail the sale, distribution, and installation of building materials moving in interstate commerce. Beyond question, they represent employees in an industry-affecting commerce. *Office Employees International Union, Local 11* v. *NLRB*, 353 U.S.

313, 77 S. Ct. 799 (1957); *Local 33 International Hod Carriers v. Mason Tenders' District Council*, 291 F.2d 496 (C.A. 2, 1961).

Mr. Justice Holmes stated in *Swift and Co.* v. *United States*, 196 U.S. 375 (1905), that:

> "(C)ommerce among the states is not a technical legal conception, but a practical one, drawn from the course of business."

Here, respondent is signatory to a trust agreement between an employer association representing employers in Oregon and Washington and a labor organization which is national in scope. Respondent is in the building and construction industry which is an industry affecting commerce. Respondent's subcontractors use a substantial amount of out-of-state products in the performance of their contracts with him. As a practical matter, respondent's course of business has a substantial effect on commerce.

II.

The Decision Below is in Square Conflict with Decisions of Other Circuits of the United States Court of Appeals Involving the Identical Issue

Respondent's electrical, plumbing and carpet laying subcontractors purchased and installed on his construction projects approximately $21,524 in 1967 and in excess of $24,000 in the period January-October, 1968 of goods and materials produced outside the State of Oregon (App. E, p. A124, infra). Respondent's construction industry projects in 1967 had a to-

tal value well in excess of $200,000 (App. D, p. A114, infra). Ninety-five percent of the plumbing supplies and ninety-nine percent of the electrical supplies used by respondent's subcontractors are manufactured outside the State of Oregon (App. C, p. A102, infra). This is typical in the industry. Respondent and his subcontractors are part of a large building and construction industry in Oregon and Southwest Washington covered by the labor agreement sought to be enforced here (see App. B, Pl. Exs. 5, 6 and 7, infra) as is amply shown by the list of 192 member contractors of the Oregon-Columbia Chapter, Associated General Contractors alone. (See App. B, Pl. Ex. 7, p. A94, infra).

This is similar to the circumstances existing in *United States* v. *Ricciardi*, 357 F.2d 91 (C.A. 2, 1966)[2] where the jurisdictional question was resolved under the language of Sec. 302(a)(1) and 302(b)(1), LMRA (29 U.S.C. Secs. 186(a)(1) and 186(b)(11), phrased in the same "industry affecting commerce" terms applicable here under Sec. 301(a), LMRA (29 U.S.C. Sec. 185(a)). Finding the trial court had jur-

[2] In *Ricciardi*, the employers, owners of apartment houses in the Bronx, made illegal payments to representatives of their employees working as building superintendents in these apartments. Indictments were brought against the employee representatives receiving the payments. The building superintendents ran the furnaces in the apartments, and the fuel for these furnaces, although purchased from local distributors, came ultimately from out of state. Fuel bills of employers making the illegal payments ran from $1200 (for a 20-unit building) to $4500 (for a 28-unit building) each year. There was no evidence that this was not representative of the industry.

isdiction to hear the case, the *Ricciardi* court held that to confine the term "industry affecting commerce" to the certain employer's activities would contradict the broad connotation and definition of the word "industry."

The appropriate "industry" to determine jurisdiction, according to *Ricciardi*, is made up of all business activities in the same field as the business of the employer whose employees are represented by the labor organization involved. As pointed out in *Ricciardi*, this analysis follows not only from the obvious connotations of the word "industry," but also is proper in light of the congressional intent to extend the National Labor Relations Act to the full limits allowed by the Commerce Clause.[3] The *Ricciardi* court stated while there were no express statements that a labor dispute with the building superintendents involved would burden interstate commerce, there was no need to belabor the obvious effect this would have on the sale and distribution of fuel oil originating outside the state.

The *Ricciardi* facts are directly applicable to the present case, but the decision is opposite. Respondent is part of a broad building and construction industry in Oregon and Southwest Washington. Carpenter-employees in the industry are represented by the same labor organizations representing the carpenters em-

[3] The *Ricciardi* decision then cites *Wickard* v. *Filburn*, 317 U.S. 111, (1942) holding Congress, under the Commerce Clause, may limit wheat production of a particular farmer even though he and his family consume all of his own product.

ployed by Hiatt (App. B, Pl. Ex. 7, p. A80, infra). It is this "industry" that is appropriate for determining whether jurisdiction exists.

Considering the substantial impact a labor dispute involving Hiatt alone would have on materials coming to his construction jobs from outside the state and the burden on interstate commerce which would occur if there was a dispute in the entire industy, there is no question but respondent is an employer in an "industry affecting commerce." The curtailment of electrical, plumbing and carpeting materials originating outside the State of Oregon would impose a heavy burden on commerce between the states. This is the jurisdictional requirement of Sec. 301(a), LMRA (29 U.S.C. Sec. 185(a)) which petitioners have amply met.

Therefore, the conflict between the *Ricciardi* and *Hiatt* decisions should be resolved in favor of upholding federal jurisdiction.

The decision below is also in conflict with *Moglia* v. *Geoghegan*, 403 F.2d 110 (C.A. 2, 1968). In that case, a deceased employee's widow sued the trustees of a labor-management pension trust fund. Jurisdiction in the federal district court was founded on the existence of a question arising under a statute of the United States regulating interstate commerce. Sec. 302, LMRA (29 U.S.C. Sec. 186). This made the action one which the district court had original jurisdiction pursuant to 28 U.S.C. Sec. 1337.

The case at bar is broader in scope than *Moglia* v. *Geoghegan*, supra. Rather than a suit between an individual and trustees of the fund, the present case is between an employer and trustees of a fund. The labor-management fund involved here is regulated by Sec. 302 of the LMRA. This court has held that Sec. 1337, Judicial Code and Judiciary (28 U.S.C. Sec. 1337) gives district courts original jurisdiction in suits involving the LMRA, *Arco Corp.* v. *Aero Lodge 735*, 390 U.S. 557 (1968).

Therefore, the decision below should be reversed and brought into harmony with *Moglia*.

CONCLUSION

For the reasons stated herein, this Petition should be granted, and the judgment and decision below reversed with instructions to remand for trial on the merits.

Respectfully submitted,

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APPENDIX A

Pre-Trial Order

(Filed July 28, 1968)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 68-13

E. B. WEBER, E. A. SCHLECHT, ROBERT J. CALEY, NORMAN L. BUCKNER, CARL M. HALVORSON, ERIC HOFFMAN, J. M. STEINMULLER, JR., and G. O. GULDE, as Trustees for the Oregon-Washington Carpenters-Employers Health and Welfare, Pension, and Apprenticeship and Training Trust Funds,

Plaintiffs,

v.

WENDALL HIATT,

Defendant.

PRE-TRIAL ORDER

As a result of Pre-Trial conference heretofore held, at which plaintiffs were represented by Paul T. Bailey and defendant by Henry J. Camarot, their respective counsel, the following issues of fact and law were framed and exhibits identified:

I

STATEMENT OF JURISDICTION

The jurisdiction of this Court is based on Section

301 of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 185). Jurisdiction is contested as set forth below in plaintiffs' and defendant's contentions.

II
NATURE OF PROCEEDINGS

This is a claim for relief wherein the plaintiffs, trustees of health and welfare, pension and apprenticeship and training trust funds seek from defendant, an alleged contributing employer, certain monthly contributions for plaintiff trust funds for the benefit of the employer's employees. Plaintiffs seek the recovery of specific amounts of money plus an audit of defendant's payroll records in order to ascertain additional amounts of delinquent monthly contributions owed, plus 10% liquidated damages on all amounts owed as delinquent contributions, plus reasonable attorney's fees and Court costs.

III
AGREED FACTS

The following facts have been agreed upon by the parties and require no proof:

(1) Plaintiffs are the trustees under that Trust Agreement described as "Trust Agreement, Oregon-Washington Carpenters-Employers Health and Welfare Trust Fund" dated January 1, 1956 and amended November 5, 1956, the Trust Agreement being that Agreement appended to plaintiffs' complaint in this cause and marked Exhibit "A" to plaintiffs' complaint

and marked Plaintiffs' Exhibit 1 in this Pre-Trial Order.

(2) Plaintiffs are the trustees under that Trust Agreement described as "Trust Agreement, Oregon-Washington Carpenters-Employers Pension Trust Fund," dated December 19, 1962, the Trust Agreement being that Agreement appended to plaintiffs' complaint in this cause and marked Exhibit "B" to plaintiffs' complaint and marked Plaintiffs' Exhibit 2 in this Pre-Trial Order.

(3) Plaintiffs are the trustees under that Trust Agreement described as "Trust Agreement, Oregon-Washington Carpenters - Employers Apprenticeship and Training Trust Fund," dated December 28, 1965, the Trust Agreement being that Agreement appended to plaintiffs' complaint in this cause and marked Exhibit "C" to plaintiffs' complaint and marked Plaintiffs' Exhibit 3 in this Pre-Trial Order.

(4) An audit of defendant's pertinent payroll records was taken on or about February 1, 1968 for the period January 1, 1963 through December 31, 1967, a written report of which is Plaintiffs' Exhibit 4 to this Pre-Trial Order.

(5) The audit is true and correct in its mathematical computation and in the account of man-hours worked; but this is not to be construed as an admission that the dollar amounts listed are owed as delinquent payments and liquidated damages.

IV
PLAINTIFFS' CONTENTIONS

Plaintiffs make the following contentions:

(1) The Court has jurisdiction of this case by reason of Section 301 of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 185), in that this is a suit for violation of a contract between an employer and a labor organization representing employees in an industry affecting commerce.

(2) Defendant is now and has been since February 7, 1962, bound to all of the terms and conditions of the Health and Welfare, Pension and Apprenticeship and Training Trust Agreements (Pl. Exs. 1, 2 and 3) and is now and has been at all times relevant bound to the provisions of the Master Carpenters' Labor Agreements, marked Plaintiffs' Exhibits 5, 6 and 7 in this Pre-Trial Order, as they pertain to contributions owed to the plaintiff trust funds. These contractual obligations exist by virtue of defendant having executed and become a signatory to the Oregon State Building and Construction Trades Council Articles of Agreement, marked Plaintiffs' Exhibit 8 in this Pre-Trial Order, which Agreement effectively adopts, ratifies and incorporates the Trust Agreements and the Carpenters' Labor Agreements.

(3) The then current Carpenters' Labor Agreements (Pl. Ex. 5) required the defendant each month to pay 10c to the Health and Welfare Trust Fund and 10c to the Pension Trust Fund per hour for each com-

pensable man-hour worked prior to April 15, 1963 by all his carpenter, millwright and pile driver employees.

(4) The then current Carpenters' Labor Agreement (Pl. Ex. 5) required the defendant each month to pay 15c to the Health and Welfare Trust Fund and 15c to the Pension Trust Fund per hour for each compensable man-hour worked between April 15, 1963 and April 15, 1965 by all his carpenter, millwright and pile driver employees.

(5) The then current Carpenters' Labor Agreement (Pl. Ex. 6) required the defendant each month to pay 15c to the Health and Welfare Trust Fund, 15c to the Pension Trust Fund and ½c to the Apprenticeship and Training Trust Fund per hour for each compensable man-hour worked between May 1, 1965 and April 30, 1968 by all his carpenter, millwright and pile driver employees.

(6) The now current Carpenters' Labor Agreement (Pl. Ex. 7) requires that defendant each month pay 25c to the Health and Welfare Trust Fund, 20c to the Pension Trust Fund and 2c to the Apprenticeship and Training Trust Fund per hour for each compensable man-hour worked on and after May 1, 1968 by all his carpenter, millwright and pile driver employees.

(7) The defendant, at all times herein, has employed employees who perform work of the type covered by all of the afore-mentioned agreements.

(8) The trust agreements of the Health and Welfare, Pension and Apprenticeship and Training Trust Funds, at Articles II, Sections 9 (Pl. Ex. 1, 2, and 3) require an employer who has not timely made his monthly payments to pay an additional charge of 10% of the amount of said delinquent payments as liquidated damages.

(9) The defendant owes to the Health and Welfare Trust Fund $624.75 by way of delinquent contributions, plus $62.48 by way of liquidated damages thereon; to the Pension Trust Fund $624.75 by way of delinquent contributions plus $62.48 by way of liquidated damages thereon; and to the Apprenticeship and Training Trust Fund $6.32 by way of delinquent contributions plus $.63 by way of liquidated damages thereon, all for that period of time up to and including December 31, 1967.

(10) The Trust Agreements of the Health and Welfare, Pension and Apprenticeship and Training Trust Funds, at Articles IV, Sections 11 (Pl. Exs. 1, 2 and 3) require the defendant, as an employer, to submit to an audit and examination of his pertinent payroll records by the plaintiffs or by plaintiffs' authorized representative.

(11) The Trust Agreements of the Health and Welfare, Pension and Apprenticeship and Training Trust Funds, at Articles IV, Sections 5 (Pl. Exs. 1, 2 and 3) authorize plaintiffs' recovery of reasonable attorneys' fees in the event of legal suit or proceedings against a delinquent employer, and the sum of $1,750

is a reasonable amount to reimburse plaintiffs for attorneys' fees on the claims for all three of the Trust Fund claims herein.

V
DEFENDANT'S CONTENTIONS

Defendant makes the following contentions:

1. That this Court does not have jurisdiction.

2. That the defendant did not commit himself to any binding agreement as contended by the plaintiffs.

VI
ISSUES OF FACT

The following are the issues of fact to be decided by the Court:

(1) Is this a suit for violation of a contract between an employer and a labor organization representing employees in an industry affecting commerce?

(2) Did the defendant bind himself to the provisions of the aforementioned Trust Agreements (Pl. Exs. 1, 2 and 3) and the Master Carpenters' Labor Agreements (Pl. Exs. 5, 6 and 7) as they pertain to Health and Welfare, Pension and Apprenticeship and Training Trust Fund contributions for the period February 7, 1962 to the present?

(3) Do the Carpenters' Labor Agreements (Pl. Exs. 5, 6 and 7) require that defendant pay each month 10c to the Health and Welfare Trust Fund and 10c to the Pension Trust Fund during the period prior

to April 15, 1963, 15c to the Health and Welfare Trust Fund and 15c to the Pension Trust Fund during the period April 15, 1963 to April 30, 1968, 1½c to the Apprentice and Training Trust Fund during the period May 1, 1965 to April 30, 1968 and 25c to the Health and Welfare Trust Fund, 20c to the Pension Trust Fund and 2c to the Apprenticeship and Training Trust Fund during the period on and following May 1, 1968 per hour for each compensable man-hour worked by all his carpenter, millwright and pile driver employees.

(4) Is the audit report, true and correct in its account of, the carpenters, millwrights or pile drivers status of defendant's employees listed therein?

(5) Do Articles II, Sections 9 of the Trust Agreements of plaintiff trust funds require an employer who has not timely made his monthly payments to pay an additional charge of 10% of the amount of said delinquent payments as liquidated damages?

(6) If the answer to Issues 1, 2, 3, 4 and 5 is "Yes," does the list immediately below represent the amounts owed by the defendant to the plaintiff trust funds as and for delinquent payments and liquidated damages up to and including December 31, 1967?

(a) Health and Welfare Trust Fund:
  (i) $624.75—delinquent contributions
  (ii) 62.48—liquidated damages

(b) Pension Trust Fund:
  (i) $624.75—liquidated contributions
  (ii) 62.48—liquidated damages

(c) Apprenticeship and Training Trust Fund:
(i) $ 6.32—delinquent contributions
(ii) .63—liquidated damages

(7) If the answer to Issues 1 and 2 is "Yes," do Articles IV, Sections 11 of the Trust Agreement of plaintiff trust funds (Pl. Exs. 1, 2 and 3) require that defendant submit to an examination of his pertinent payroll records by plaintiffs or plaintiffs' authorized representative?

(8) If the answer to Issues 1 and 2 is "Yes," do Articles IV, Section 5 of the Trust Agreements of plaintiff trust funds authorize plaintiffs' recovery of reasonable attorneys' fees in the event of suit against a delinquent employer, and if so, is the amount of $1,750 a reasonable amount to reimburse plaintiffs for attorneys' fees on the claims of all three of the Trust Fund claims herein?

VII
ISSUES OF LAW

The following are the issues of law to be determined by the Court:

(1) Does the Court have jurisdiction of this case.

(2) Is the defendant bound by the provisions of the Trust Agreements of the plaintiff trust funds (Pl. Exs. 1, 2 and 3) and the Master Carpenters' Labor Agreements (Pl. Exs. 5, 6 and 7) as they pertain to Health and Welfare, Pension and Apprenticeship and Training Trust Fund contributions for the period February 7, 1962 to the present?

(3) If the answer to Issues 1 and 2 is "Yes," is the defendant each month obligated to contribute 10c to the Health and Welfare Trust Fund and 10c to the Pension Trust Fund during the period prior to April 15, 1963, 15c to the Health and Welfare Trust Fund and 15c to the Pension Trust Fund during the period April 15, 1963 to April 30, 1968, 1½c to the Apprentice and Training Trust Fund during the period May 1, 1965 to April 30, 1968 and 25c to the Health and Welfare Trust Fund, 20c to the Pension Trust Fund and 2c to the Apprenticeship and Training Trust Fund during the period on and following May 1, 1968 per hour for each compensable man-hour worked by all his carpenter, millwright and pile driver employees.

(4) If the answer to Issues 1 and 2 is "Yes," is defendant obligated to pay to plaintiff trust funds 10% of the amount of any delinquent payments as and for liquidated damages?

(5) If the answer to Issues 1 and 2 is "Yes," must the defendant submit to an audit of his pertinent payroll records by plaintiffs or plaintiffs' authorized representative?

(6) If the answer the Issues 1 and 2 is "Yes", is the defendant obligated to pay to the plaintiff trust funds their reasonable attorneys' fees due to the initiation of this legal action?

VIII
EXHIBITS

The following exhibits were produced and marked and may be received in evidence, if otherwise admissible, without further authentication. Except as hereinafter noted, each is what it purports to be:

Plaintiffs' Exhibits

(1) Trust Agreement, Oregon-Washington Carpenters-Employers Health and Welfare Trust Fund, dated January 1, 1956 and amended November 5, 1956, which exhibit is a printed and true copy of the original.

(2) Trust Agreement, Oregon-Washington Carpenters-Employers Pension Trust Fund, dated December 19, 1962, which exhibit is a printed and true copy of the original.

(3) Trust Agreement, Oregon-Washington Carpenters-Employers Apprenticeship and Training Trust Fund, dated December 28, 1965, which exhibit is a printed and true copy of the original.

(4) Auditor's report dated February 1, 1968.

(5) Master Carpenters Labor Agreement made and entered May 28, 1962, which exhibit is a printed and true copy of the original.

(6) Master Carpenters Labor Agreement made and entered April 29, 1965, which exhibit is a printed and true copy of the original.

(7) Master Carpenters Labor Agreement made and entered May 1, 1968, which exhibit is a printed and true copy of the original.

(8) Articles of Agreement made and entered February 7, 1962 between Wendell Hiatt and the Oregon State Building and Construction Trades Council.

(9)

(10)

Defendant's Exhibits

(21)

(22)

(23)

(24)

(25)

(26)

(27)

(28)

(29)

(30)

IX

EXPERT TESTIMONY

The Court has set no limitation on the number of experts allowed to give testimony. The plaintiffs will have no more than two expert witnesses to testify, and they will testify as to the audit report (Plts. Ex. 4) resulting from an audit of defendant's pertinent payroll records.

X

The foregoing constitutes the Pre-Trial Order in the above cause; the pleadings pass out of the case

and are superseded by this Order, which shall not be amended except by consent of the parties, or by order of the Court to prevent manifest injustice.

DATED this — day of ——, 1968.

District Judge

The foregoing Pre-Trial Order
is approved:

PAUL T. BAILEY, Of Attorneys for Plaintiffs Date

HENRY J. CAMAROT, Of Attorneys for Defendant Date

APPENDIX B

PLAINTIFF'S EXHIBITS

Pertinent Excerpts from Plaintiff's Exhibit No. 1

TRUST AGREEMENT

OREGON-WASHINGTON CARPENTERS-EMPLOYERS
HEALTH AND WELFARE TRUST FUND
(As Amended November 5, 1956)

This trust agreement, made and entered into as of the first day of January, 1956, by and between the Associated General Contractors of America, Inc., (Heavy and Highway and Building Divisions), Portland Home Builders Association, Vancouver Contractors Association, Longview-Kelso Contractors Association, Eugene Contractors Association, Lower Columbia Contractors Association, Interior Builders Association, Pendleton Contractors Association and certain contractor associations of Oregon and Southwest Washington, which become signatory hereto, acting for and on behalf of their members and hereinafter referred to as "Employers" and the Oregon State Council of Carpenters, District Council of Carpenters of Portland and Vicinity, Southwest Washington District Council, Pile Drivers, Bridge, Dock and Wharf Builders who are signatories to the hereinafter mentioned collective bargaining agreement, acting for and on behalf of the local unions listed therein, and hereinafter referred to as the "Union", recites and provides as follows:

(1) The Employers are parties to a collective bargaining agreement with the Union which provides for employer contributions of a certain sum per hour for each compensable hour by employees under such agreement to Health and Welfare Plan to be established for the benefit of such employees.

(2) The parties have agreed that such contributions shall be payable to and be deposited in the Trust Fund created and established by this Trust Agreement.

(3) The purpose of this Trust Agreement is to provide for the establishment of such Trust Fund and for the maintenance of such Health and Welfare Plan in the manner hereinafter set forth.

Now, Therefore, This Agreement Witnesseth:

That in consideration of the premises, in order to create said trust to be known as the Oregon-Washington Carpenters-Employers Health and Welfare Trust Fund, it is mutually understood and agreed as follows:

ARTICLE I
Definitions

Unless the context or subject matter otherwise requires, the following definitions shall govern in this Trust Agreement:

Section (1) The term "collective bargaining agreement" includes (a) The Associated General Contractors of America, Inc., (Heavy and Highway and Building Division), Portland Home Builders Associa-

tion, Vancouver Contractors Association, Longview-Kelso Contractors Association, Eugene Contractors Association, Lower Columbia Contractors Association, Interior Builders Association, Pendleton Contractors Association, Agreement with the Oregon State Council of Carpenters, District Council of Carpenters of Portland and Vicinity, Southwest Washington District Council, Pile Drivers, Bridge, Dock and Wharf Builders, dated January 1, 1956; (b) any other collective bargaining agreement in the Construction or closely related industry between the Union, or any of its affiliated Local Unions, and any employer association or individual employer which provides for the making of employer contributions to this Fund.

Section (2) The term "individual employer" means any employer who is required by the collective bargaining agreement to make contributions to the Fund, or who does in fact make one or more contributions to the Fund pursuant to Article IX.

Section (3a) The terms "employee" shall mean:

1. Any employee of an individual employer who performs work of the type covered by the collective bargaining agreement; and any full time employee member of the Union.

2. [Deleted by Amendment effective November 5, 1956.]*

Section (3-b) The term "associate employee" shall mean:

1. All of the salaried employees of individual pro-

prietors, all of the salaried employees of partners, corporate officers and all of the corporation's salaried employees, or all of the salaried employees of any one of them, all of whom are actively engaged in the affairs of the business of the individual employer contributors and for whom the contributions provided by this Trust Agreement are made for the purpose of providing such persons with the benefits set forth in this Trust Agreement. This shall be limited to salaried employees who are employed within the geographical area covered by the collective bargaining agreements. [Revised by Amendment effective November 5, 1956.]*

2. All employees of the Union other than those specified under Section (3-a) above, and for whom contributions provided by this Trust Agreement are made voluntarily by the Union for the purpose of providing such persons with the benefits set forth in this Trust Agreement.

Section (4) The term "Fund" as used herein means the trust estate of the Oregon-Washington Carpenters-Employers Health and Welfare Trust Fund, which shall consist of all Contracts and Policies together with all dividends, refunds, or other sums payable to the Trustees on account of such Policies, all investments made and held by the Trustees, all monies received by the Trustees as Employer Contributions, voluntary contributions as provided for herein, or as income from investments made and held by the Trustees for uses, purposes and trusts set forth in this Agreement.

Section (5) The term "Health and Welfare Plan" as herein used means the Plan established by the Employers and the Union pursuant to the collective bargaining agreement and which is mentioned in the said Agreement.

Section (6) The term "signatory association" means any employer organization, other than "Employers", which signs this Agreement on behalf of its members or executes on behalf of such members a written acceptance of and agreement to be bound by the terms of this Agreement.

Section (7) The term "Trustees" as used herein means the Trustees designated in Section (1) Article III of this Agreement together with their successors designated in the manner provided by Section (6) of Article III of this Agreement.

ARTICLE II

Purpose of the Trust and Application of the Fund

Section (1) There is hereby created the Oregon-Washington Carpenters-Employers Health and Welfare Trust Fund as hereinbefore defined.

Section (2) This Trust Fund is created for the purpose of providing and maintaining through policies issued by duly licensed insurance carriers or hospital-medical service organizations, group life and group accident and health insurance including group hospitalization, medical and surgical benefits, or any of such insurance as may be determined by the Trus-

tees for the benefit of the employees of the individual employers and associate employees, and if so determined by the Trustees, in whole or in part, group insurance for hospitalization, surgical and medical care for the families of such employees as defined by the Trustees.

The Trustees may agree with regard to any such policy or service contract with the carrier thereof, upon waiting periods and such other provisions concerning eligibility of Employees as the Trustees may deem appropriate.

Section (3) The Fund shall have its principal office in the City of Portland and County of Multnomah.

Section (4) No employee or beneficiary shall be entitled to receive any part of the contributions made or required to be made to the trust fund in lieu of the benefits provided by the trustees by the Health and Welfare Plan. All rights of any employee or beneficiary shall be limited to the benefits provided by the Insurance, Health & Welfare plan as fixed and determined by the trustees.

Section (5) Neither the Employers, any signatory association, any individual employer, the Union, any beneficiary of the Health and Welfare Trust Plan nor any other person shall have any right, title or interest in the Fund other than specifically provided in this Agreement, and no part of the Fund shall revert to the Employers, any signatory association or any individual employer. Neither the Fund nor any con-

tributions to the Fund shall be in any manner liable for or subject to the debts, contracts or liabilities of the Employers, any signatory association, any individual employer, the Union or any beneficiary. No part of the Fund nor any benefits payable in accordance with the Health and Welfare Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge by any person. The Board of Trustees shall establish a procedure whereby any beneficiary may direct that benefits due him for medical or hospital services rendered or to be rendered be paid to an institution in which he is hospitalized or to a physician or surgeon treating him.

Section (6) Neither the Employers nor any signatory association, nor any officer, agent, employee or committee member of the Employers or any signatory association shall be liable to make contributions to the Fund or be under any other liability to the Fund, or with respect to the Health and Welfare Plan, except to the extent that he may be an individual employer required to make contributions to the fund with respect to his or its own individual or joint venture operations, or to the extent he may incur liability as a Trustee as hereinafter provided. The liability of any individual employer to the Fund, or with respect to the Health and Welfare Plan, shall be limited to the payments required by the collective bargaining agreement with respect to his or its individual or joint venture operations, and in no event shall he or it be liable or responsible for any portion of the contri-

butions due from other individual employers with respect to the operations of such employers. The individual employers shall not be required to make any further payments or contributions to the cost of operations of the Fund or of the Health and Welfare Plan except as herein elsewhere provided.

Section (7) Neither the Employers, any signatory association, any individual employer, the Union nor any employee shall be liable or responsible for any debts, liabilities or obligations of the Fund or the Trustees.

Section (8) Contributions to the Fund shall be due commencing January 1, 1966, for the work on and after that date and shall be payable in Portland, Oregon, in regular monthly installments starting on or before February 25, 1956, and continuing from month to month thereafter subject to the provisions of the collective bargaining agreements. The contribution payable on or before February 25, 1956, shall include all payments which have theretofor accrued for work performed during the period from January 1, 1956, up to the close of the individual employers' payroll period ending closest to the last day of that month and thereafter each monthly contribution shall include all payments which have accrued in the interim for work performed up to the close of the individual employers' payroll period ending closest to the last day of the preceding calendar month. Each monthly contribution shall be accompanied by a report in a form prescribed by the Board of Trustees.

Section (9) Each contribution to the Fund shall be made promptly, and in any event on or before the 25th day of the calendar month in which it becomes payable, on which date said contribution, if not then paid in full, shall be delinquent. If any individual employer fails to make his or its monthly contribution in full on or before the 25th day of the month on four occasions within any twelve-month period, the Board of Trustees may provide by resolution that thereafter during the twelve-month period immediately following such resolution the 5th day of the month shall be the delinquency date for such individual employer. The parties recognize and acknowledge that the regular and prompt payment of employer contributions to the Fund is essential to the maintenance in effect of the Health and Welfare Plan, and that it would be extremely difficult, if not impracticable, to fix the actual expense and damage to the Fund and to the Health and Welfare Plan which would result from the failure of an individual employer to pay such monthly contributions in full within the time above provided. Therefore, the amount of damage to the Fund and the Health and Welfare Plan resulting from any such failure shall be the sum of 10% of the amount of the contribution or contributions due, which amount shall become due and payable to the Fund as liquidated damages and not as a penalty, in Portland, Oregon, upon the day immediately following the date on which the contribution or contributions become delinquent and shall be in addition to said delinquent contribution or contributions.

In case of willful failure of an individual employer to make required contributions to this Trust Fund, the Trustees may take necessary legal action to collect such withheld contributions as well as costs of such action and any damages to the Fund or Health and Welfare Plan caused by such willful failure to make said contributions. Continued failure to make prompt payments to the Funds or willful failure to make required payments shall be deemed to be a breach of the Bargaining Agreement by the Individual Employer, and, in such event, the parties to this Agreement may jointly or severally bring action against the Individual Employer in law or in equity or may use other economic action to either compel the performance of this Agreement as well as the Collective Bargaining Agreement, or as well to require the Individual Employer to make any and all payments due or to become due by him under the terms of this Agreement.

ARTICLE IV

Functions and Powers of Board of Trustees

Section (5) The Board of Trustees shall have the power to demand and enforce the prompt payment of contributions to the Fund, and the payment of reimbursement for expenses and damages due to delinquencies as provided in Section (9) of Article II. If any individual employer defaults in the making of such payments and if the Board consults legal counsel with respect thereto, or files any suit or claim with respect thereto, there shall be added to the obli-

gation of the employer who is in default, reasonable attorney's fees, court costs and all other reasonable expenses incurred by the Board in connection with such suit or claim.

Section (11) The Board of Trustees shall maintain suitable and adequate records of and for the administration of the Fund and the Health and Welfare Plan. The Board may require the Employers, any signatory association, any individual employer, the Union, any employee or any other beneficiary under the Health and Welfare Plan to promptly furnish to the Trustees on demand such payroll records, information, data, report or documents reasonably relevant to and suitable for the purposes of such administration of the Fund and the Policies. The parties agree that they will use their best efforts to secure compliance with any reasonable request of the Board for any such information, data, report or documents. The Trustees, or their authorized representatives, duly authorized in writing by one Employer trustee and one Employee trustee may examine the pertinent payroll records of each individual employer with respect to the individual employees benefiting from this Agreement whenever such examination is deemed necessary or advisable by the Trustees in connection with the proper administration of the Fund and policies.

PORTLAND CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC. (HEAVY AND HIGHWAY DIVISION)

Fred H. Slate, A. H. Harding

PORTLAND CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC. (BUUILDING DIVISION)
Howard Brewton, Wilford C. Long

VANCOUVER CONTRACTORS ASSOCIATION
Wilford C. Long

LONGVIEW-KELSO CONTRACTORS ASSOCIATION
J. M. Beaver, Harry R. Calbom, Jr.

LOWER COLUMBIA CONTRACTORS ASSOCIATION
George F. Anderson (By Elson C. Shields)

INTERIOR BUILDERS ASSOCIATION
L. L. Hickok (By Elson C. Shields)

EUGENE CONTRACTORS ASSOCIATION
Leslie Hardie, Trygve Vik

PENDLETON CONTRACTORS ASSOCIATION

PORTLAND HOME BUILDERS ASSOCIATION
Frank D. Evans, D. Winters

SOUTHWEST WASHINGTON DISTRICT COUNCIL OF CARPENTERS
E. A. Schlecht, J. N. Olin, James Dally

DISTRICT COUNCIL OF CARPENTERS OF PORTLAND AND VICINITY
Clell Harris, Art Elkins, Robert Mountain, E. V. Espey

OREGON STATE COUNCIL OF CARPENTERS

Ivor T. Jones, H. K. Davis, W. R. Dailey, George Potucek

PILEDRIVERS, BRIDGE, DOCK AND WHARF BUILDERS

Local 2416, Leo M. Neal; Local 2419, George Webber; Local 1036, Ray Bruner; Local 1223, Elvin W. Smith; Local 1879, Elvin W. Smith.

Acceptance of Office by Trustees

The undersigned hereby accept office as trustees appointed pursuant to the foregoing Agreement and agree to act under and be subject to all of the terms and conditions of said Agreement. The undersigned hereby declare that they hold the Fund created by said Agreement in trust for the uses and purposes set forth in said Agreement.

Dated March 20, 1956.

Employer Trustees:
Elton Slate
Mark Perrault
Eric Hoffman
Elson Shields

Employee Trustees:
Clell Harris
Ivor T. Jones
E. A. Schlecht
Leo M. Neal

* We hereby accept and mutually agree with the other signatories to the collective bargaining agreement to make the above revisions in the Trust Agreement dated as of January 1, 1956, to be effective upon the receipt by the Administrator of similar acceptances from all of the other signatories.

PORTLAND CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC. (HEAVY AND HIGHWAY DIVISION) July 9, 1956

Elton D. Slate, A. H. Harding, Fred H. Slate

PORTLAND CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC. (BUILDING DIVISION) August 17, 1956

Howard Brewton, Wilford C. Long

VANCOUVER CONTRACTORS ASSOCIATION

August 17, 1956, Wilford C. Long

LONGVIEW-KELSO CONTRACTORS ASSOCIATION

July 18, 1956, J. M. Beaver, Harry R. Calbom, Jr.

LOWER COLUMBIA CONTRACTORS ASSOCIATION

July 3, 1956, George F. Anderson

INTERIOR BUILDERS ASSOCIATION

November 5, 1956, C. H. Frantz

EUGENE CONTRACTORS ASSOCIATION

July 6, 1956, Leslie Hardie

PORTLAND HOME BUILDERS ASSOCIATION

July 25, 1956, Frank D. Evans, D. Winters

SOUTHWEST WASHINGTON DISTRICT COUNCIL OF CARPENTERS

July 7, 1956, Albert Skude, E. A. Schlecht

DISTRICT COUNCIL OF CARPENTERS OF PORTLAND AND VICINITY

July 26, 1956, Clell Harris

OREGON STATE COUNCIL OF CARPENTERS

June 30, 1956—Ivor T. Jones, H. K. Davis, Walter R. Dailey, George Potucek.

PILEDRIVERS, BRIDGE, DOCK AND WHARF BUILDERS

August 21, 1956—Local 2416, Leo M. Neal
August 10, 1956—Local 2419, George Webber
July 12, 1956—Local 1036, Ray Bruner
July 5, 1956—Local 1223, Elvin W. Smith
July 5, 1956—Local 1879, Elvin W. Smith

Pertinent Excerpts from Plaintiff's Exhibit No. 2

TRUST AGREEMENT

Oregon-Washington Carpenters-Employers

PENSION TRUST FUND

This Trust Agreement, made and entered into as of the 19th day of December, 1962, by and between Portland Chapter, The Associated General Contractors of America, Inc. (Heavy and Highway Division), Portland Chapter, The Associated General Contractors of America, Inc. (Building Division), Portland Home Builders Association, Vancouver Contractors Association, Longview-Kelso Contractors Association, Williamette General Contractors Association, Eugene Contractors Association, Lower Columbia Contractors Association, Interior Builders Association and certain contractor associations of Oregon and southwest Washington, which may become signatory hereto, acting for and on behalf of their members and the Oregon State Council of Carpenters (Affiliated Wtih

United Brotherhood of Carpenters & Joiners of America), Portland & Vicinity District Council of Carpenters and Southwest Washington District Council of Carpenters, UB of C & J of A, who are signatories to the hereinafter mentioned Collective Bargaining Agreement, acting for and on behalf of the local unions listed therein and Local No. 1342 of the Southwest Washington Council of Carpenters, UB of C & J of A, and Local No. 2416, Local No. 2419, Local No. 1036, Local No. 1223 and Local No. 1879 of the Pile-drivers, Bridge, Dock & Wharf Builders, UB of C & J of A, who are also signatories to the hereinafter mentioned Collective Bargaining Agreement.

(1) The above-mentioned parties are parties to a Collective Bargaining Agreement which provides for employer contributions of a certain sum per hour for each compensable hour worked by employees under such agreement to a trust fund for the purpose of providing pension benefits for all eligible employees covered by such agreement.

(2) The parties have agreed that such contributions shall be payable to and be deposited in the Pension Trust Fund created and established by this Trust Agreement.

(3) The purpose of this Trust Agreement is to provide for the establishment of such Trust Fund and for the maintenance of such Pension Plan in the manner hereinafter set forth.

NOW, THEREFORE, this Agreement Witnesseth:

That in consideration of the premises, in order to create said trust to be known ts the Oregon-Washington Carpenters-Employers Pension Trust Fund, it is mutually understood and agreed as follows:

ARTICLE I
Definitions

Unless the context or subject matter otherwise requires, the following definitions shall govern in this Trust Agreement:

Section 1. Collective Bargaining Agreement:

a. The agreement by and between Employers and Union dated June 19, 1962.

b. Any other collective bargaining agreement in the construction or closely related industry between Union, or any of its affiliated Local Unions, and any Employer, Signatory Association or Individual Employer which provides for the making of employer contributions to the Fund.

c. Any extensions, amendments, modifications or renewal of any of the above-described agreements, or any substitute or successor agreements to them which provide or the making of employer contributions to this Fund.

Section 2. Contribution: The payment made or to be made to the Fund by any Individual Employer under the provisions of the Collective Bargaining Agreement. The term "Contribution" shall also include any payment made or to be made on behalf of any employee-member of Union or a Local Union.

Section 3. Employee: Any employee of an Individual Employer who performs one or more hours of work of the type covered by the Collective Bargaining Agreement and any employee-member of Union or a Local Union.

Section 4. Employers: The following associations which are parties to this Trust Agreement: Portland Chapter, The Associated General Contractors of America, Inc. (Heavy and Highway Division), Portland Chapter, The Associated General Contractors of America, Inc. (Building Division), Portland Home Builders Association, Vancouver Contractors Association, Longview-Kelso Contractors Association, Eugene Contractors Association, Lower Columbia Contractors Association and Interior Builders Association and their respective successors and assigns.

Section 5. Fund: The trust fund created and established by the Trust Agreement.

Section 6. Individual Employer: An employer who is required by the Collective Bargaining Agreement to make contributions to the Fund, or who does in fact make one or more contributions to the Fund pursuant to Article IX, and Union and Local Unions who employ employee-members.

Section 7. Local Union: Any local union affiliated with Union.

Section 8. Pensioner: Any employee, as defined in Section (3) hereof, who has terminated said employment and is entitled to benefits from the Trust Fund under the Pension Plan.

Section 9. Plan: The Pension Plan created pursuant to the Collective Bargaining Agreement, the Trust Agreement and any modification, amendment, extension or renewal of said Plan.

Section 10. Signatory Association: Any employer organization, other than Employers, which signs the Trust Agreement on behalf of its members or executes on behalf of such members a written acceptance of and agreement to be bound by the terms of the Trust Agreement.

Section 11. Trust Agreement: This agreement and any modification, amendment, extension or renewal thereof.

Section 12. Trustee: Any natural person designated as a trustee pursuant to Article II hereof.

Section 13. Union: The following union entities which are parties to this Trust Agreement: Oregon State Council of Carpenters (affiliated with United Brotherhood of Carpenters & Joiners of America), Portland & Vicinity District Council of Carpenters, Southwest Washington District Council of Carpenters, UB of C & J of A, Local No. 1342 of the Southwest District Council of Carpenters, UB of C & J of A, and Local No. 2416, Local No. 2419, Local No. 1036, Local No. 1223 and Local No. 1879 of the Piledrivers, Bridge, Dock & Wharf Builders, UB of C & J of A, and their respective successors and assigns.

ARTICLE II

Purpose of the Fund and Application of the Fund

Section 1. There is hereby created the Oregon-Washington Carpenters - Employer's Pension Trust Fund which shall consist of all contributions made for the establishment and maintenance of the Pension Plan, investments made and held by the Trustees, and all interest, income and other returns thereon of any kind whatsoever, and any other property received or held by the Trustees pursuant to this Trust Agreement.

Section 2. This Trust Fund is created for the purpose of assisting Employees and their beneficiaries in providing a life income for their support when they shall have retired from the industry, as may be determined by the Board of Trustees pursuant to the provisions of the Pension Plan. The Board of Trustees shall establish in the Plan such eligibility requirements and benefit schedules as it may from time to time deem appropriate.

Section 3. The Fund shall have its principal office in the City of Portland, County of Multnomah, State of Oregon.

Section 4. No Employee, Pensioner or beneficiary under the Pension Plan shall be entitled to receive any part of the contributions made or required to be made to the Trust Fund in lieu of the benefits provided by the Pension Plan. All rights of any Employee, Pen-

sioner or beneficiary under the Pension Plan shall be limited to the benefits provided by the Pension Plan as fixed and determined by the Board of Trustees.

Section 5. Neither Employers, any Signatory Association, any Individual Employer, Union, any Local Union, any Employee, Pensioner nor beneficiary under the Pension Plan nor any other person have any right, title or interest in or to the Fund other than as specifically provided in this Trust Agreement or in the Pension Plan. Neither the Fund nor any contributions to the Fund shall be in any manner liable for or subject to the debts, contracts or liabilities of any Employers, and Signatory Association, any Individual Employer, Union, any Local Union nor any Employee, Pensioner or beneficiary under the Pension Plan, No part of the Fund nor any benefits payable in accordance with the Pension Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge by any person. Any pension benefit, prospective pension benefit, right or interest shall not be subject in any manner to voluntary transfer or transfer by operation of law or otherwise, and shall be exempt from the claims of creditors or other claimants and from all orders, decrees, garnishments, executions or other legal or equitable process or proceedings to the fullest extent permissible by law.

Section 6. Neither Employers, Union, Local Union, nor any Signatory Association, nor any officer, agent, employee or committee member of Employers,

Union, Local Union or any Signatory Association shall be liable to make contributions to the Fund or be under any other liability to the Fund, or with respect to the Pensilon Plan, except to the extent that he may be an Individual Employer required to make contributions to the Fund with respect to his or its own individual or joint venture operations, or to the extent he may incur liability as a Trustee as hereinafter provided. The liability of any Individual Employer to the Fund, or with respect to the Pension Plan, shall be limited to the payments required by the Collective Bargaining Agreement or the Trust Agreement with respect to his or its individual or joint venture operations, and in no event shall he or it be liable or responsible for any portion of the contributions due from other Individual Employers with respect to the operations of such other Individual Employers. Individual Employers shall not be required to make any further payments or contributions to the cost of operations of the Fund or of the Pension Plan except as herein elsewhere provided.

Section 7. Neither Employers, any Signatory Association, any Individual Employer, Union, any Local Union nor any Employee, Pensioner or beneficiary under the Pension Plan shall be liable or responsible for any debts, liabilities or obligations of the Fund or the Trustees.

Section 8. Contributions to the Fund shall be due commencing June 1, 1962, for work on and after that date and shall be payable at the principal office of the

Fund in Portland, Oregon, in regular monthly installments starting on or before July 25, 1962, and continuing from month to month thereafter subject to the provisions of the Collective Bargaining Agreement. The contribution payable on or before July 25, 1962, shall include all payments which have theretofore accrued for work performed during the period from June 1, 1962, up to the close of the Individual Employer's payroll period ending closest to the last day of that month, and thereafter each monthly contribution shall include all payments which have accrued in the interim for work performed up to the close of the Individual Employer's payroll period ending closest to the last day of the preceding calendar month. Each monthly contribution shall be accompanied by a report in a form prescribed by the Board of Trustees.

Section 9. Each contribution to the Fund shall be made promptly, and in any event made so as to be received at the principal office of the Fund on or before the 25th day of the calendar month in which it becomes payable, on which date said contribution, if not then paid in full, shall be delinquent. If any Individual Employer fails to make his or its monthly contribution in full on or before the 25th day of the month on four occasions within any 12-month period, the Board of Trustees may provide by resolution that thereafter during the 12-month period immediately following such resolution the 10th day of the month shall be the delinquency date for such Individual Employer. The parties recognize and acknowledge that the regular and prompt payment of Individual Employer contribu-

tions to the Fund is essential to the maintenance in effect of the Pension Plan, and that it would be extremely difficult and impracticable to fix the actual expense and damage to the Fund and to the Pension Plan which would result from the failure of an Individual Employer to pay such monthly contributions in full within the time above provided. Therefore, the amount of damage to the Fund and the Pension Plan resulting from any such failure shall be the sum of 10 per cent of the amount of the contribution or contributions due, which amount shall become due and payable to the Fund as liquidated damages and not as a penalty, in Portland, Oregon, upon the day immediately following the date on which the contribution or contributions become delinquent and shall be in addition to said delinquent contribution or contributions.

In case of willful failure of an Individual Employer to make required contributions to this Trust Fund, the Trustees may take necessary legal action to collect such withheld contributions as well as costs of such action and any damages to the Fund or Pension Plan caused by such wilful failure to make said contributions. Continued failure to make prompt payments to the Fund or willful failure to make required payments shall be deemed to be a breach of the Collective Bargaining Agreement by the Individual Employer, and, in such event, the parties to this Trust Agreement may jointly or severally bring action against the Individual Employer in law or in equity or may use other economic action to either compel the

performance of this Trust Agreement as well as the Collective Bargaining Agreement, or as well to require the Individual Employer to make any and all payments due or to become due by him under the terms of this Trust Agreement.

Section 10. The Fund shall be administered by the Board of Trustees for the exclusive benefit of Employees, Pensioners and beneficiaries pursuant to the provisions of the Pension Plan. Notwithstanding anything to the contrary contained in this Trust Agreement or in the Pension Plan, any modification, amendment, extension or renewal hereof or of the Plan, no portion of the Fund shall at any time revert to, or be recoverable by any of the Employers, any Signatory Association, any Individual Employer, any Union or Local Union or be used for or diverted to purposes other than for the exclusive benefit of Employees, Pensioners or beneficiaries under the Pension Plan, and the payment of the administrative expenses of the Fund and the Plan or refund of erroneous payments.

ARTICLE IV

Functions and Powers of Board of Trustees

Section 5. The Board of Trustees shall have the power to demand and enforce the prompt payment of contributions to the Fund, and the payment of reimbursement for expenses and damages due to delinquencies as provided in Section 9 of Article II. If any Individual Employer defaults in the making of such payments and if the Board consults legal counsel with re-

spect thereto, or files any suit or claim with respect thereto, there shall be added to the obligation of the Individual Employer who is in default reasonable attorneys' fees, court costs and all other reasonable expenses incurred by the Board in connection with such suit or claim.

Section 11. The Board of Trustees shall maintain suitable and adequate records of and for the administration of the Fund and the Pension Plan. The Board of Trustees may require Employers, any Signatory Association, any Individual Employer, Union, any Local Union, any Employee, any Pensioner or any beneficiaries under the Pension Plan to promptly furnish the Board of Trustees on demand such payroll records, information, data, reports or documents reasonably relevant to and suitable for the purposes of such administration of the Fund. The parties agree that they will use their best efforts to secure compliance with any reasonable request of the Board for any such information, data, reports or documents. The Board of Trustees, or their authorized representatives, duly authorized in writing by one Employer Trustee and one Employee Trustee, may examine the pertinent payroll records of each Individual Employer with respect to the persons benefiting from this Trust Agreement whenever such examination is deemed necessary or advisable by the Board of Trustees in connection with the proper administration of the Fund and the Pension Plan.

IN WITNESS WHEREOF, the parties have exe-

cuted this Trust Agreement as of the date first hereinabove written.

OREGON STATE COUNCIL OF CARPENTERS (AFFILIATED WITH UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA)

By (Signed) Swan Nelson, Pres.

By (Signed) George Hann, Secy

PILEDRIVERS, BRIDGE, DOCK & WHARF BUILDERS, UB of C & J of A

LOCAL NO. 1036, KELSO-LONGVIEW, WASH.

By (Signed) Lyle Johnson (by R. C.)

By (Signed) Walter Backman (by R. C.)

LOCAL NO. 1223, COOS BAY, OREGON

By (Signed) Vernon G. Williamson, Pres. (by G. H)

By (Signed) R. Kenneth Lanier, Secy (by G. H.)

LOCAL NO. 1879, REEDSPORT, OREGON

By (Signed) Chester C. Todd (by R. C.)

By (Signed) Melvin McCaugan (by R. C.)

LOCAL NO. 2416, PORTLAND, OREGON

By (Signed) Darrell B. Walker (by R. C.)

By (Signed) Roy W. Coles

LOCAL NO. 2419, ASTORIA, OREGON

By (Signed) Chris Simonsen (by R. C.)

By (Signed) George Webber (by R. C.)

PORTLAND & VICINITY DISTRICT COUNCIL OF CARPENTERS

By (Signed) Frank G. Wahl, Pres.

By (Signed) Gerald Larsen, Sec.

SOUTHWEST WASHINGTON DISTRICT COUNCIL OF CARPENTERS, UB of C & J of A.
By (Signed) A. J. Dokos, Sec.-Treas.
By (Signed) James C. Daily, Pres.
By (Signed) E. A. Schlecht

LOCAL NO. 1342, ILWACO, WASHINGTON
By (Signed) Edward Wicksberg (by J.C.E.)
By (Signed) Joseph C. Egger

EUGENE CONTRACTORS ASSOCIATION
By (Signed) John M. Steinmuller, Jr., Pres.
By (Signed) Francis W. Kelley, Jr., Sec.

INTERIOR BUILDERS ASSOCIATION
By (Signed) W. E. Gardner (by A.H.H.)
By (Signed) A. H. Harding

LONGVIEW-KELSO CONTRACTORS ASSOCIATION.
By (Signed) Robert K. Kellogg, Jr. (by A.H.H.)
By (Signed) A. H. Harding

LOWER COLUMBIA CONTRACTORS ASSOCIATION
By (Signed) G. F. Anderson (by A.H.H.)
By (Signed) A. H. Harding

PORTLAND CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC. (HEAVY AND HIGHWAY DIVISION)
By (Signed) R. A. Heintz (by A.H.H.)
By (Signed) A. H. Harding
By (Signed) Carl M. Halvorson (by A.H.H.)

PORTLAND CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC. (BUILDING DIVISION)

By (Signed) George A. Moore, Pres. (by W.C.L.)

By (Signed) Wilford C. Long, Sec'y.

PORTLAND HOME BUILDERS ASSOCIATION

By (Signed) Archie E. Hodges, Pres.

By (Signed) Henry Ennen (by A.E.H.)

VANCOUVER CONTRACTORS ASSOCIATION

By (Signed) Merle J. Burges, Pres. (by W.C.L.)

By (Signed) Wilford C. Long, Exec. Sec'y.

WILLAMETTE GENERAL CONTRACTORS ASSOCIATION

By (Signed) John A. Ritchie, Pres.

By (Signed) L. H. Meloy, Sec. (by J.A.R.)

Pertinent Excerpts from Plaintiff's Exhibit No. 3

TRUST AGREEMENT

OREGON-WASHINGTON CARPENTERS-EMPLOYERS APPRENTICESHIP AND TRAINING TRUST FUND

This Trust Agreement, made and entered into as of the 28th day of December, 1965, by and between Oregon-Columbia Chapter, The Associated General Contractors of America, Inc., Longview-Kelso Association, Eugene Contractors Association, Acoustical Contractors Association of Oregon, Inc., Willamette General Contractors Association, Portland Home Builders Association and Certain other Associations

of contractors that may become signatories hereto and certain contractor associations of Oregon and Southwest Washington, which may become signatory hereto, acting for and on behalf of their members and the Oregon State Council of Carpenters, Portland and Vicinity District Council of Carpenters and Southwest Washington District Council of Carpenters of United Brotherhood of Carpenters and Joiners of America, who are signatories to the hereinafter mentioned Collective Bargaining Agreement, acting for and on behalf of the local unions listed therein and Local No. 2416, Local No. 2419, Local No. 1036, Local No. 1223 and Local No. 1879 of the Piledrivers, Bridge, Dock & Wharf Builders, UB of C&J of A, who are also signatories to the hereinafter mentioned Collective Bargaining Agreement.

(1) The above-mentioned parties are parties to a Collective Bargaining Agreement which provides for employer contributions of a certain sum per hour for each compensible hour worked by employees under such agreement to a trust fund for the purposes of providing apprenticeship and journeyman training.

(2) The parties have agreed that such contributions shall be payable to and be deposited in the Apprenticeship and Training Fund created and established by this Trust Agreement.

(3) The purpose of this Trust Agreement is to provide for the establishment of such Trust Fund and for the maintenance of such apprenticeship and training in the manner hereinafter set forth.

NOW, THEREFORE, this Agreement Witnesseth:

That in consideration of the premises, in order to create said trust to be known as the Oregon-Washington Carpenters-Employers Apprenticeship and Training Trust Fund, it is mutually understood and agreed as follows:

ARTICLE I
DEFINITIONS

Unless the context or subject matter otherwise requires, the following definitions shall govern in this Trust Agreement:

Section 1. Collective Bargaining Agreement:

a. The agreement by and between Employers and Union dated April 29, 1965.

b. Any other collective bargaining agreement in the construction or closely related industry between the Union, or any of its affiliated Local Unions, and any Employers, Signatory Association or Individual Employers which provides for the making of employer contributions to the Fund.

c. Any extensions, amendments, modifications or renewal of any of the above-described agreements, or any substitute or successor agreements to them which provide for the making of employer contributions to this Fund.

Section 2. Contributions: The payment made or to be made to the Fund by any Individual Employer un-

der the provisions of the Collective Bargaining Agreement. The term "Contribution" shall also include any payment made or to be made on behalf of any employee-member of Union or a Local Union.

Section 3. Employee: Any employee whether union or non-union of any Individual Employer who performs one or more hours of work of the type covered by the Collective Bargaining Agreement and any employee-member of Union or a Local Union.

Section 4. Employers: The following associations which are parties to this Trust Agreement: Oregon-Columbia Chapter, The Associated General Contractors of America, Inc., Longview-Kelso Contractors Association, Eugene Contractors Association, Acoustical Contractors Association of Oregon, Inc., Willamette General Contractors Association, Portland Home Builders Association and certain other associations of contractors that may become signatories hereto and their respective successors and assigns.

Section 5. Fund: The trust fund created and established by the Trust Agreement.

Section 6. Individual Employers. An employer who is required by the Collective Bargaining Agreement to make contributions to the Fund, or who does in fact make one or more contributions to the Fund pursuant to Article IX, and Union and Local Unions who employ employee-members.

Section 7. Local Union: Any local union affiliated with Union.

Section 8. Signatory Association: Any employer organization, other than Employers, which signs the Trust Agreement on behalf of its members or executes on behalf of such members a written acceptance of and agreement to be bound by the terms of the Trust Agreement.

Section 9. Trust Agreement: This agreement and any modification, amendments, extension or renewal thereof.

Section 10. Trustee: Any natural person designated as a trustee pursuant to Article III hereof.

Section 11. Union: The following union entities which are parties to this Trust Agreement: Oregon State Council of Carpenters, Portland & Vicinity District Council of Carpenters, Southwest Washington District Council of Carpenters and Local No. 2416, Local No. 2419, Local No. 1036, Local No. 1223 and Local No. 4879 of the Piledrivers, Bridge, Dock & Wharf Builders, United Brotherhood of Carpenters and Joiners of America, and their respective successors and assigns.

ARTICLE II

PURPOSE OF THE FUND AND APPLICATION OF THE FUND

Section 1. There is hereby created the Oregon-Washington Carpenters - Employers Apprenticeship and Training Trust Fund which shall consist of all contributions made, investments made and held by

the Trustees, and all interest, income and other returns thereon of any kind whatsoever, and any other property received or held by the Trustees pursuant to this Trust Agreement.

Section 2. That the Trust Fund shall be used for the purpose of defraying costs of apprenticeship or other training programs by the education of apprentices and journeymen, by the establishment, maintenance and or support of any apprentice training school by the furnishing and supplying of facilities, tools, equipment and text books and other materials and supplies for the training of apprentices and journeymen and apprentice training as the Board of Trustees deems practible.

Section 3. The Fund shall have its principal office in the City of Portland, County of Multnomah, State of Oregon.

Section 4. No person shall be entitled to receive any part of the contributions made or required to be made to the Trust Fund in lieu of the benefits provided.

Section 5. Neither Employers, any Signatory Association, any Individual Employer, Union, any Local Union, any Employee, nor any other person shall have any right, title or interest in or to the Fund other than as specifically provided in this Trust Agreement. Neither the Fund nor any contributions to the Fund shall be in any manner liable for or subject to the debts, contracts, or liability of any Employers, any

Signatory Association, any Individual Employer, Union, any Local Union nor any Employee. No part of the fund nor any benefits available shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge by any person.

Any benefit, prospective benefit, right or interest shall not be subject in any manner to voluntary transfer or transfer by operation of law or otherwise, and shall be exempt from the claims of creditors or other claimants and from all orders, decrees, garnishments, executions or other legal or equitable process or proceedings to the fullest extent permissible by law.

Section 6. Neither Employers, Union, Local Union nor any Signatory Association, nor any officer, agent, employee or committee member of Employers, Union, Local Union or any Signatory Association shall be liable to make contributions to the Fund or be under any other liability to the Fund, except to the extent that he may be an Individual Employer required to make contributions to the Fund with respect to his or its own individual or joint venture operations, or to the extent he may incur liability as a Trustee as hereinafter provided. The liability of any Individual Employer to the Fund shall be limited to the payments required by the Collective Bargaining Agreement or the Trust Agreement (including the payments required by the Trustees as authorized in the Collective Bargaining Agreement) with respect to his or its individual or joint venture operations, and in no event shall he or it be liable or responsible for any portion of

the contributions due from other Individual Employers. Individual Employers shal not be required to make any further payments or contributions to the cost of operations of the Fund except as herein provided.

Section 7. Neither Employers, any Signatory Association, any Individual Employer, Union, any Local Union nor any Employee shall be liable or responsible for any debts, liabilities or obligations of the Fund or the Trustees.

Section 8. Contributions to the Fund shall be due commencing May 1, 1965, for work on and after that date and shall be payable at the principal office of the Fund in Portland, Oregon, in regular monthly installments starting on or before June 25, 1965, and continuing from month to month thereafter subject to the provisions of the Collective Bargaining Agreement.

The contribution payable on or before June 25, 1965, shall include all payments which have theretofore accrued for work performed during the period from May 1, 1965, up to the close of the Individual Employer's payroll period ending closest to the last day of that month, and thereafter each monthly contribution shall include all payments which have accrued in the interim for work performed up to the close of the Individual Employer's payroll period ending closest to the last day of the preceding calendar month. Each monthly contribution shall be accompanied by a report in a form prescribed by the Board of Trustees.

Section 9. Each contribution to the Fund shall be made promptly, and in any event made so as to be received at the principal office of the Fund on or before the 25th day of the calendar month in which it becomes payable, on which date said contribution, if not then paid in full, shall be delinquent. The parties recognize and acknowledge that the regular and prompt payment of Individual Employer contributions to the Fund is essential to the maintenance of the Fund, and that it would be extremely difficult and impracticable to fix the actual expense and damage to the Fund which would result from the failure of an Individual Employer to pay such monthly contributions in full within the time above provided. Therefore, the amount of damage to the Fund resulting from any such failure shall be the sum of 10 per cent of the amount of the contribution or contributions due, which amount shall become due and payable to the Fund as liquidated damages and not as a penalty upon the day immediately following the date on which the contribution or contributions become delinquent and shall be in addition to said delinquent contribution or contributions.

In case of failure of an Individual Employer to make required contributions to this Trust Fund, the Trustees may take necessary legal action to collect such withheld contributions, as well as costs of such action, including any necessary attorney fees and any damages to the Fund or to Apprenticeship and Training Program costs by such willful failure to make such contributions. Continued failure to make prompt pay-

ments to the Fund or failure to make required payments shall be deemed to be a breach of the Collective Bargaining Agreement by the Individual Employer, and in such event, the Trustees or the parties to this Trust Agreement may jointly or severally bring action against the Individual Employer in law or in equity or may use other economic action to either compel the performance of this Trust Agreement as well as the Collective Bargaining Agreement, or as well to require the Individual Employer to make any and all payments due or be become due by him under the terms of this Trust Agreement.

Section 10. The Fund shall be administered by the Board of Trustees for the purposes set forth at Article II, Section 2 hereof. Notwithstanding anything to the contrary contained in this Trust Agreement, any modification, amendment, extension or renewal hereof, no portion of the Fund shall at any time revert to, or be recoverable by any of the Employers, any Signatory Association, any Individual Employer, any Union or Local Union or be used for or diverted to purposes other than set forth at Article II, Section 2 hereof, and the payment of the administrative expenses of the Fund or refund of erroneous payments.

ARTICLE IV

FUNCTIONS AND POWERS OF BOARD OF TRUSTEES

Section 5. The Board of Trustees shall have the power to demand and enforce the prompt payment

of contributions to the Fund, and the payment of reimbursement for expenses and damages due to delinquencies as provided in Section 9, Article II. If any Individual Employer defaults in the making of such payments and if the Board consults legal counsel with respect thereto, or files any suit or claim with respect thereto, there shall be added to the obligation of the Individual Employer who is in default reasonable attorneys' fees, court costs and all other reasonable expenses incurred by the Board in connection with such suit or claim.

Section 10. The Board of Trustees shall maintain suitable and adequate records of and for the administration of the Fund. The Board of Trustees may require Employers, any Signatory Association, any Individual Employer, Union, and Local Union, any Employee, or any beneficiaries to promptly furnish the Board of Trustees on demand such payroll records, information, data, reports or documents reasonably relevant to and suitable for the purposes of such administration of the Fund. The parties agree that they will use their best efforts to secure compliance with any reasonable request of the Board for any such information, data, reports or documents. The Board of Trustees, or their authorized representatives, duly authorized in writing by one Employer Trustee and one Employee Trustee, may examine the pertinent payroll records of each Individual Employer with respect to his employees whenever such examination is deemed necessary or advisable by the Board of Trustees in connection with the proper administration of the Fund.

EMPLOYERS:

OREGON-COLUMBIA CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.
R. A. Schrader, President
John M. Steinmuller, Jr., Chairman Labor Comm.
D. Russell Gochnour, Manager

LONGVIEW-KELSO CONTRACTORS ASSOCIATION
Elmer C. Johnson
Harry R. Calbom, Jr.

EUGENE CONTRACTORS ASSOCIATION
R. A. Chambers, President

ACOUSTICAL CONTRACTORS ASSOCIATION OF OREGON, INC.
Verne Wilde, President
Roscoe Watts, Secretary

WILLAMETTE GENERAL CONTRACTORS ASSOCIATION
Dale Pence, Chairman Negotiating Committee

PORTLAND HOME BUILDERS ASSOCIATION
Allen Edwards, Jr., President
Robert L. King, Manager

UNION:

OREGON STATE COUNCIL OF CARPENTERS (AFFILIATED WITH UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA)
Swan Nelson, President

Robert J. Caley, Executive Secretary
Glenn E. Randall
Hal Morton

PORTLAND & VICINITY DISTRICT COUNCIL OF CARPENTERS
Andrew R. B. Clark, President
E. B. Weber, Executive Secretary

SOUTHWEST WASHINGTON DISTRICT COUNCIL OF CARPENTERS, UB OF C & J OF AMERICA
E. A. Schlecht
J. N. Olin, Secretary
E. D. Trinneer, President

PILEDRIVERS, BRIDGE, DOCK & WHARF BUILDERS, UB OF C & J OF AMERICA
Roy W. Coles, Chairman Negotiating Committee Oregon-Washington Carpenters-Employers Apprenticeship and Training Trust Fund

LOCAL NO. 2416, PORTLAND, OREGON
Norman L. Buckner, President
Roy W. Coles, Chairman Negotiating Committee

LOCAL NO. 2419, ASTORIA, OREGON
Harold Niemelin
Goerge Webber

LOCAL NO. 1036, KELSO-LONGVIEW, WASH.
Lyle G. Johnson

LOCAL NO. 1223, COOS BAY, OREGON
Chester C. Todd, President
Dalton Pinion, Secretary

LOCAL NO. 1857, MILLWRIGHTS—OREGON
Joe Lundquist, President
Hal Morton, Secretary

WASHINGTON STATE QUALIFIED MILLWRIGHTS
H. H. Brown, President State Council
E. A. Schlecht, Representative.

ACCEPTANCE OF OFFICE BY TRUSTEES

The undersigned hereby accept office as Trustees appointed pursuant to the foregoing Agreement and agree to act under and be subject to all of the terms and conditions of said Agreement. The undersigned hereby declare that they hold the Fund created by said Agreement in trust for the uses and purposes set forth in said Agreement.
Dated December 28, 1965.

EMPLOYER TRUSTEES:
Carl M. Halvorson
Eric Hoffman
John M. Steinmuller, Jr.
Ralph Pierson

EMPLOYEE TRUSTEES
Robert J. Caley
E. B. Weber
E. A. Schlecht
Norman Buckner

Pertinent Excerpts from Plaintiff's Exhibit No. 5

MASTER LABOR AGREEMENT
CARPENTERS — 1962, 1963 & 1964
OREGON-S.W. WASHINGTON
(Building, Home Building, and
Heavy and Highway Construction)

Between

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC., BUILDING AND HEAVY
PORTLAND HOME BUILDERS ASSOCIATION
VANCOUVER CONTRACTORS ASSOCIATION
LONGVIEW-KELSO CONTRACTORS ASSN.
WILLAMETTE GENERAL CONTRACTORS ASSOCIATION
EUGENE CONTRACTORS ASSOCIATION
LOWER COLUMBIA CONTRACTORS ASSN.
INTERIOR BUILDERS ASSOCIATION
ACOUSTICAL CONTRACTORS ASSOCIATION OF OREGON, INC., and
CERTAIN CONTRACTOR ASSOCIATIONS, OREGON AND S. W. WASHINGTON

and

OREGON STATE COUNCIL
PORTLAND & VICINITY DISTRICT COUNCIL
S. W. WASHINGTON DISTRICT COUNCIL
PILEDRIVERS, BRIDGE, DOCK AND WHARF BUILDERS
of the
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

THIS AGREEMENT, made and entered into as of May 28, 1962 by and between the following parties:

PORTLAND CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC. (HEAVY & HIGHWAY & BUILDING DIVISION), PORTLAND HOME BUILDERS ASSOCIATION, VANCOUVER CONTRACTORS ASSOCIATION, LONGVIEW-KELSO CONTRACTORS ASSOCIATION, WILLAMETTE GENERAL CONTRACTORS ASSOCIATION, ENGENE CONTRACTORS ASSOCIAION, LOWER COLUMBIA CONTRACTORS ASSOCIATION, INTERIOR BUILDERS ASSOCIATION . . . AND CERTAIN OTHER ASSOCIATIONS OF CONTRACTORS THAT MAY BECOME SIGNATORIES HERETO (these parties being referred to hereinafter as the "CONTRACTOR", which word, for the purpose if this Agreement shall be read and construed to mean jointly or severally, as the context may call for, those members of the above associations whose names are set forth on Schedule "B" or supplement thereto),

and

OREGON STATE COUNCIL, PORTLAND & VICINITY DISTRICT COUNCIL, SOUTHWEST WASHINGON DISTRICT COUNTIL, AND PILEDRIVERS, BRIDGE, DOCK AND WHARF BUILDERS of the United Brotherhood of Carpenters and Joiners of America, acting for all of their local unions, as set forth on Schedule "C" attached hereto,

which are or may hereafter be established in the territory covered by this Agreement, for themselves and by virtue of authority duly vested in them, for the individual members of their respective unions (these parties being, jointly or severally, as the context may call for, referred to hereinafter as the "UNION"), shall constitute a binding agreement upon the Contractor and the component bodies of the Union, acting jointly and severally for the purpose of governing the employment of individual workmen.

PURPOSE OF THIS AGREEMENT

The purposes of this Agreement are to promote the settlement of labor disagreements by conference, to prevent strikes and lockouts, to stabilize conditions in all types of construction in the area affected by this Agreement, to prevent avoidable delays and expense, and generally encourage a spirit of helpful cooperation between employer and employee groups to their mutual advantage.

ARTICLES OF AGREEMENT

ARTICLE I

Territory

This Agreement shall cover the entire State of Oregon, and the following area in the State of Washington: The counties of Klickitat, Skamania, Clark, Cowlitz, Wahkiakum and that portion of Pacific County south of a stright line made by extending the north boundary line of Wahkiakum County west to the Pacific Ocean.

ARTICLE II
Work Affected

Section 1. This Agreement shall govern all types of construction work coming within the recognized jurisdiction of the United Brotherhood of Carpenters and Joiners of America, in the territory described in Article I.

Section 2. To clarify the scope of this Labor Agreement and to thereby avoid future misunderstanding, highway and heavy construction work is defined as including but not limited to the following: Construction and reconstruction of roads, streets, highways, alleys, sidewalks, guard rails, fences, parkways, parking areas, athletic fields, airports, railroads, street railways, bridges, overpasses, underpasses, grade separations, grade crossings, track elevations, elevated highways, sewers, water mains, foundations, piledriving, sanitation projects, irrigation projects, flood control projects, reclamation projects, reservoirs, dams, dikes, levees, revetments, channels, aqueducts, channel cut-offs, jetties, breakwaters, harbor developments, docks, piers, abutments, retaining walls, transmission lines, pipelines, duct lines, subways, shafts, tunnels, excavation of earth and rock, clearing and grubbing, land levelling, quarrying, industrial plant construction other than building construction as defined below; including operation, maintenance and repair of land and floating plant equipment, vehicles and other facilities used in connection with the described work and service, and all other work of similar nature.

Building construction work shall cover but not be limited to building structures either residential, industrial or commercial, including modifications, thereof, or additions and repairs thereto, intended for use for shelter, protection, comfort or convenience.

Section 3. See Carpenters, Millwrights, Piledrivers Schedules "A" for character of work.

ARTICLE III
Effective Date
Duration—Modification

Section 1. When executed by the parties hereto, the terms of this Agreement shall become effective as of April 15, 1962, or with the nearest payroll period to April 15, 1962, except as otherwise indicated herein, and shall remain in full force and effect until and including April 14, 1965, and thereafter as provided in this Article.

Section 2. Any party hereto desiring termination, modification or changes in this Agreement to take effect subsequent to April 14, 1965, or to take effect for any agreement year subsequent to April 14, 1965, shall serve written notice on the other party at interest on or before January 15, prior to the end of each such agreement year, requesting negotiation and submitting all proposed modifications or changes. If no such notice is given, this Agreement shall continue in full force and effect from year to year.

(See Carptenters, Millwrights and Piledrivers Schedules "A" for effective dates of wage rate increases.)

ARTICLE XVII
Health and Welfare

Section 1. It is agreed by the parties hereto that all employers coming under the scope of this Agreement who are, or who may become signatory parties to this Agreement, shall contribute a sum of ten cents (10c) for each compensable man-hour of Carpenters, Millwrights and Piledrivers worked effective from April 1, 1962, to and including April 14, 1963, and a sum of fifteen cents (15c) for each compensable man-hour effective April 15, 1963, to and including April 14, 1965, which contribution shall be paid into the existing Oregon-Washington Carptenter-Employer Health and Welfare Trust Fund. Such payments shall be made monthly in accordance with the requirements of the trust agreement from the effective date of this Agreement to and including April 14, 1965. The applicable provisions of the existing trust document are hereby adopted for the period covered by this Agreement, and the fund established by prior contributions under former agreements between the parties shall be recognized as a fund held in trust and therefore an appropriate depositary for the contributions referred to herein above.

Section 2. It shall be a violation of this Agreement for the Union to allow workmen covered by this Agreement to work for an employer who fails to make the proper contributions to the Health and Welfare fund in accordance with the provisions of this Agreement.

ARTICLE XVIII
Pension

Section 1. In addition to the wage scales listed in Schedules "A" herein, all persons, firms or corporations as listed in Schedule "B", or otherwise coming under the scope of this Agreement, who are, or who may become signatory parties to this Agreement, shall pay into a trust fund for the purpose of providing pension benefits for all eligible employees covered by this Agreement, the sum of ten cents (10c) per compensable man-hour worked effective June 1, 1962, to April 14, 1963, and 15 cents (15c) per compensable man-hour worked effective April 15, 1963, to and including April 14, 1965, such payments to be made in accordance with the requirements of the trust agreement, from the effective date of this Agreement to and including April 14, 1965.

Section 2. It is further agreed that the trust fund established for the purpose of providing pension benefits shall be one that is jointly established and equally administered by the trustees from the Contractor and the Union.

Section 3. It shall be a violation of this Agreement for the Union to allow workmen covered by this Agreement to work for an employer who fails to make the proper contributions to the pension fund in accordance with the provisions of this Agreement.

IN WITNESS WHEREOF, this Agreement, including Schedules "A", "B", "C" and other attach-

ment shereto, has been executed by the parties hereto, on this 19th day of June, 1962.

OREGON STATE COUNCIL OF CARPENTERS
(Affiliated with United Brotherhood of Carptenters & Joiners of America)
By SWAN NELSON
President
By GEORGE HANN
Executive Secretary
By JOHN SNODGRASS, Jr.
Member Negotiating Committee

PORTLAND & VICINITY DISTRICT COUNCIL OF CARPENTERS
By FRANK G. WAHL
President
By GERALD LARSEN
Secretary

SOUTHWEST WASHINGTON DISTRICT COUNCIL OF CARPENTERS, U.B. of C. & J. of A.
By JAMES C. DALLY
President
By A. J. DOKOS
Secretary
By E. A. SCHLECHT
Chairman Negotiating Committee

LOCAL NO. 1342, ILWACO, WASHINGTON
By EDWARD WICKSBERG, President
By JOSEPH C. EGGER, Secretary

PILEDRIVERS, BRIDGE, DOCK & WHARF BUILDERS, U.B. of C. & J. of A.

LOCAL NO. 2416, PORTLAND, OREGON
By DARREL B. WALKER, President
By ROY W. COLES, Secretary

LOCAL NO. 2419, ASTORIA, OREGON
By CHRIS SIMMONSEN, President
By GEORGE WEBBER, Secretary

LOCAL NO. 1036, KELSO-LONGVIEW, WASH.
By LYLE JOHNSON, President
By WALTER BECKMAN, Secretary

LOCAL NO. 1223, COOS BAY, OREGON
By VERNON G. WILLIAMSON, President
By R. KENNETH LANIER, Secretary

LOCAL NO. 1879, REEDSPORT, OREGON
By CHESTER C. TODD, President
By HELVIN McCAUGON, Secretary

ATTESTED BY:
L. J. HILLER
International Representative

PORTLAND CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC. (Heavy and Highway Division)
By R. A. Heintz
President
By A. H. HARDING
Manager
By CARL M. HALVORSON
Chairman Labor Committee

PORTLAND CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA,

INC. (Building Division)
My W. A. HAMMOND
President
By WILFORD C. LONG
Secretary
By GEORGE MOORE
Chairman Labor Committee

PORTLAND HOME BUILDERS ASSOCIATION
By J. C. NUNN
President
By HENRY ENNEN
Secretary

VANCOUVER CONTRACTORS ASSOCIATION
By MERLE J. BURGESS
President
By WILFORD C. LONG
Secretary

LONGVIEW-KELSO CONTRACTORS ASSOCIATION
By ROBERT K. KELLOGG, Jr.
President
By A. H. HARDING
Secretary

WILLAMETTE GENERAL CONTRACTORS ASSOCIATION
By JOHN RICHIES
President
By L. H. MELOY
Secretary

EUGENE CONTRACTORS ASSOCIATION
By JOHN H. STEINMULLER, Jr.
President
By FRANCIS KELLY
Secretary

LOWER COLUMBIA CONTRACTORS ASSOCIATION
By C. C. ANDERSON
By A. H. HARDING

INTERIOR BUILDERS ASSOCIATION
By W. E. GARDNER
By A. H. Harding

UNION SIGNATORS TO THE 1962, 1963 AND 1964 LABOR AGREEMENT

OREGON STATE COUNCIL OF CARPENTERS
(Street address and phone number have been deleted)
Labor Temple, Salem, Oregon
Local #573, Baker, Or.
Local #933, Hermiston, Or.
Local #190, Klamath Falls, Or.
Local #2019, La Grande, Or.
Local #2067, Medford, Or.
Local #426, Payette (Oreg. Territory) New Plymouth, Ida.

CENTRAL OREGON DISTRICT COUNCIL
1200 Galveston Ave., Bend, Or.
Bend, Or.
Local #1277, Bend, Or.
Local #1057, Hood River, Or.

Local #2204, Madras, Warm Springs, Or.
Local #1625, Prineville, Or.
Local #291, Redmond, Bend, Or.
Local #1896, The Dalles, Or.

CLATSOP COUNTY DISTRICT COUNCIL,
P. O. Box 776, Astoria, Or.
Local #780, Astoria, Or.
Local #1502, Seaside, Astoria, Or.
Local # 1760, Tillamook, Or.

COAST WILLAMETTE DISTRICT COUNCIL
1059 N 33rd St., Corvallis, Or.
Local #2133, Albany, Or.
Local #2181, Corvallis, Or.
Local #1273, Eugene, Or.
Local #1848, Newport, Or.
Local #1065, Salem, Or.

SISKIYOU DISTRICT COUNCIL
221A S.E. "H" St., Grants Pass, Or.
Local #2081, Brookings, Harbor, Or.
Local #1427, Gold Beach, Grants Pass, Or.
Local #814, Grants Pass, Or.
Local #1961, Roseburg, Or.

SOUTHWESTERN OREGON DISTRICT COUNCIL, 918 S. Broadway, Coos Bay, Or.
Local #1543, Bandon, Or.
Local #1223, Coos Bay, Or. (Carpenter-Piledriver)
Local #1096, Coquille, Coos Bay, Or.
Local #3082, Florence, Coos Bay, Or.

Local #1879, Reedsport, Or. (Carpenter-Piledriver)

PILEDRIVERS, BRIDGE, DOCK & WHARF BUILDERS
Local #2419, Astoria, Or.
Local #1223, Coos Bay, Or.
Local #1036, Kelso-Longview, Wn.
Local #2416, Portland, Or.
Local #1879, Reedsport, Or.

PORTLAND AND VICINITY DISTRICT COUNCIL OF CARPENTERS, Labor Temple, Portland 1, Or.
Local #2130, Hillsboro, Aloha, Or.
Local #2275, Newberg, Or.
Local #1388, Oregon City, Or.
Local #226, Portland, Or.
Local #583, Portland, Or.
Local #738, Portland, Or.
Local #1020, Portland, Or.
Local #1857, Portland, Or. (Millwrights)
Local #2154, Portland, Or.
Local #2218, Portland, Or. (Ship Caulkers)
Local #2066, St. Helens, Or.

S.W. WASHINGTON DISTRICT COUNCIL
Vancouver, Wn.
Local #1697, Bingen, Wn.
Local #1466, Camas, Wn.
Local #1342, Ilwaco, Seaview, Wn.
Local #1707, Longview, Wn.
Local #1715, Vancouver, Wn.

Oregon-Washington Carpenters-Employers
Health and Welfare Fund
U. S. National Bank, Trust Dept.
Administrator,
Portland, Oregon
(Attn. G. M. Tretheway)

Pertinent Excerpts from Plaintiff's Exhibit No. 6

CARPENTERS
1965, 1966 & 1967
MASTER LABOR AGREEMENT
CARPENTERS-PILEDRIVERS-MILLWRIGHTS
(Building, Utility, Heavy and
Highway Construction)
Between
OREGON-COLUMBIA CHAPTER, ASSOCIATED
GENERAL CONTRACTORS OF AMERICA, INC.
LONGVIEW-KELSO CONTRACTORS
ASSOCIATION
EUGENE CONTRACTORS ASSOCIATION
ACCOUSTICAL CONTRACTORS ASSOCIATION
OF OREGON, INC.
WILLAMETTE GENERAL CONTRACTORS
ASSOCIATION and
CERTAIN CONTRACTOR ASSOCIATIONS,
OREG. & S. W. WASH.
and
OREGON STATE COUNCIL
PORTLAND & VICINITY DISTRICT COUNCIL
SOUTHWEST WASHINGTON DISTRICT
COUNCIL

PILEDRIVERS, BRIDGE, DOCK AND WHARF BUILDERS
of the
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

THIS AGREEMENT, made and entered into as of April 29, 1965 by and between the following parties:

OREGON-COLUMBIA CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC., LONGVIEW-KELSO CONTRACTORS ASSOCIATION, EUGENE CONTRACTORS ASSOCIATION, ACOUSTICAL CONTRACTORS ASSOCIATION OF OREGON, INC., WILLAMETTE GENERAL CONTRACTORS ASSOCIATION and CERTAIN OTHER ASSOCIATIONS OF CONTRACTORS THAT MAY BECOME SIGNATORIES HERETO (these parties being referred to hereinafter as the "ASSOCIATION," which word, for the purpose of this Agreement shall be read and construed to mean jointly or severally, as the context may call for, those members of the above associations whose names are set forth on Schedule "B" or supplement thereto),

and

OREGON STATE COUNCIL, PORTLAND & VICINITY DISTRICT COUNCIL SOUTHWEST WASHINGON DISTRICT COUNCIL, AND PILEDRIVERS, BRIDGE, DOCK AND WHARF BUILDERS of the United Brotherhood of Carpenters and

Joiners of America, acting for all of their local unions, as set forth on Schedule "C" attached hereto, which are or may hereafter be established in the territory covered by this Agreement, for themselves and by virtue of authority duly vested in them, for the individual members of their respective unions (these parties being, jointly or severally, as the context may call for, referred to hereinafter as the "UNION"), shall constitute a binding agreement upon the Association and the component bodies of the Union, acting jointly and severally for the purpose of governing the employment of individual workmen.

PURPOSE OF THIS AGREEMENT

The purposes of this Agreement are to promote the settlement of labor disagreements by conference, to prevent strikes and lockout, to stabilize conditions in all types of construction in the area affected by this Agreement, to prevent avoidable delays and expense, and generally encourage a spirit of helpful cooperation between employer and employee groups to their mutual advantage.

ARTICLE OF AGREEMENT

ARTICLE I
TERRITORY

This Agreement shall cover the entire State of Oregon, and the following area in the State of Washington: The counties of Klickitat, Skamania, Clark, Cowlitz, Wahkiakum and that portion of Pacific County south of a straight line made by extending the

north boundary line of Wahkiakum County west to the Pacific Ocean.

ARTICLE II
WORK AFFECTED

Section 1. This agreement shall govern all types of construction work coming within the jurisdiction of the United Brotherhood of Carpenters and Joiners of America as recognized by the AFL-CIO Building and Construction Trades Department.

Section 2. To clarify the scope of this Labor Agreement and to thereby avoid future misunderstanding, utilities, highway and heavy construction work is defined as including but not limited to the following: Construction and reconstruction of roads, streets, highways, alleys, sidewalks, guard rails, fences, parkways, parking areas, athletic fields, airports, railroads, street railways, bridges, overpasses, underpasses, grade separations, grade crossings, track elevations, elevated highways, sewers, water mains, foundations, piledriving, sanitation projects, irrigation projects, *flood control* projects, reclamation projects, reservoirs, dams, dikes, levees, revetments, channels, aqueducts, channel cutoffs, jetties, breakwaters, harbor developments; docks, piers, abutments, retaining walls, transmission lines, pipelines, duct lines, subways, shafts, tunnels, excavation of earth and rock, clearing and grubbing, land leveling, quarrying, industrial plant construction other than building construction as defined below; including operation, maintenance and repair of land and floating plant equip-

ment, vehicles and other facilities used in connection with the described work and service, and all other work of similar nature.

Building construction work shall cover but not be limited to building structures either residential, industrial or commercial, including modifications, thereof, or additions and repairs thereto, intended for use for shelter, protection, comfort or convenience.

Section 3. See Carpenters, Millwrights, Piledrivers Schedules "A" for the appropriate wage rates and character of work.

ARTICLE III
EFFECTIVE DATE
DURATION — MODIFICATION

Section 1. When executed by the parties hereto, the terms of this Agreement shall become effective as of May 1, 1965, or with the nearest payroll period to May 1, 1965, except as otherwise indicated herein, and shall remain in full force and effect until and including April 30 1968, and thereafter as provided in this Article.

Section 2. Any party hereto desiring termination, modification or changes in this Agreement to take effect subsequent to April 30, 1968, or to take effect for any agreement year subsequent to April 30, 1968, shall serve written notice on the other party at interest on or before February 1, prior to the end of each such agreement year, requesting negotiation.

If no such notice is given, this Agreement shall

continue in full force and effect from year to year.

(See Carpenters, Millwrights and Piledrivers Schedules "A" for effective dates of wage rate increases.)

ARTICLE XVII
HEALTH AND WELFARE

Section 1. In addition to the wage scales listed in Schedules "A" herein, all persons, parties, firms or corporations as listed in Schedule "B", or otherwise coming under the scope of this Agreement, who are, or may become signatory parties to this Agreement, agree that the existing Health and Welfare Trust Fund as established January 1, 1956, shall continue in full force and effect for the purpose of providing Health and Welfare benefits for all eligible employees covered by this Agreement, and shall pay into the existing Oregon - Washington Carpenters - Employers Health and Welfare Trust Fund the sum of fifteen cents (15c) per compensable man-hour. Such payments shall be made monthly in accordance with the requirements of the Trust Agreement, and all applicable provisions of the existing Trust Agreement shall continue in full force and effect. The fund established by prior contributions shall be recognized as a fund held in trust, and therefore an appropriate depositary for the contributions referred to herein above.

Section 2. It shall be a violation of this Agreement for the Union to allow workmen covered by this Agreement to work for an employer who fails, after due notice to make the proper contributions to the

Health and Welfare Fund in accordance with the provisions of this Agreement.

Section 3. In the event a contractor fails to make the monetary contributions in conformity with this Article of the Agreement, the Union is free to take any economic action against such contractor it deems necessary, and such action shall not be considered a violation of this Agreement.

ARTICLE XVIII
PENSION

Section 1. In addition to the wage scales listed in Schedules "A" herein, all persons, parties, firms or corporations as listed in Schedule "B", or otherwise coming under the scope of this Agreement, who are, or may become signatory parties to this Agreement, agree that the existing Pension Trust Fund as established July 1, 1962, shall continue in full force and effect for the purpose of providing Pension benefits for all eligible employees covered by this Agreement, and shall pay into the existing Oregon-Washington Carpenters-Employers Pension Trust Fund the sum of fifteen cents (15c) per compensable man-hour. Such payments shall be made monthly in accordance with the requirements of the Trust Agreement, and all applicable provisions of the existing Trust Agreement shall continue in full force and effect. The fund established by prior contributions shall be recognized as a fund held in trust, and therefore an appropriate depositary for the contributions referred to herein above.

Section 2. It shall be a violation of this Agreement for the Union to allow workmen covered by this Agreement to work for an employer who fails, after due notice, to make the proper contributions to the Pension Fund in accordance with the provisions of this Agreement.

Section 3. In the event a contractor fails to make the monetary contributions in conformity with this Article of the Agreement, the Union is free to take any economic action against such contractor it deems necessary, and such action shall not be considered a violation of this Agreement.

ARTICLE XIX
APPRENTICESHIP FUND

Section 1. In addition to wage scales listed in Schedules "A" (Carpenters, Piledrivers, and Millwrights) all employers shall pay into the Oregon-Washington Carpenters' Apprenticeship Trust Fund the sum of one-half cent (½c) for each compensable man-hour, effective May 1, 1965.

It is further agreed that if the trustees so desire, additional contributions [illegible] (½c) per compensable hour may be added to this fund on any anniversary date of the effective date in paragraph 1 above. Total contributions to this fund shall not exceed one cent (1c) per compensable hour.

Section 2. It is further agreed that the trust fund established for the purpose of providing training for apprenticeship, trainee and journeymen training shall

be jointly established and equally administered by trustees from the Union and the Association.

Section 3. It shall be a violation of this Agreement for the Union to allow workmen covered by this Agreement to work for an employer who fails after due notice to make the proper contributions to the Apprenticeship Fund in accordance with the provision of this Agreement.

Section 4. In the event a contractor fails to make the monetary contributions in conformity with this Article of the Agreement, the Union is free to take any economic action against such contractor it deems necessary, and such action shall not be considered a violation of this Agreemnt.

IN WITNESS WHEREOF, this Agreement, including Schedules "A", "B", "C" and other attachments hereto, has been executed by the parties hereto, on this 22nd day of June, 1965.

UNION SIGNATORS TO THE 1965-1966-1967

LABOR AGREEMENT

(Street address and phone number have been deletted)

OREGON STATE COUNCIL OF CARPENTERS,
411 Labor Temple, Portland, Oregon.
Local No. 573, Baker, Oregon.
Local No. 814, Grants Pass, Oregon.
Local No. 933, Hermiston, Oregon.
Local No. 190, Klamath Falls, Oregon.
Local No. 2067, Medford, Oregon.

Local No. 426, Payette (Ore. Territory), New Plymouth, Ida.
Local No. 1776, Pendleton, Oregon.
Local No. 1961, Roseburg, Oregon.

CENTRAL OREGON DISTRICT COUNCIL
207 West Third, The Dalles.
Local No. 1277, Bend, Oregon.
Local No. 1057, Hood River, Oregon.
Local No. 2204, Madras, Oregon.
Local No. 1896, The Dalles, Oregon.

CLATSOP DISTRICT COUNCIL
P.O. Box 776, Astoria, Oregon.
Local No. 780, Astoria, Oregon.
Local No. 1502, Seaside, Oregon.
Local No. 1760, Tillamook, Oregon.

COAST-WILLAMETTE DISTRICT COUNCIL,
1059 N. 33rd St., Corvallis, Oregon.
Local No. 2133, Albany, Oregon.
Local No. 2181, Corvallis, Oregon.
Local No. 1273, Eugene, Oregon.
Local No. 1848, Newport, Oregon.
Local No. 1065, Salem, Oregon.

SOUTHWESTERN OREGON DISTRICT COUNCIL, 918 S. Broadway, Coos Bay, Oregon.
Local No. 1543, Bandon, Oregon.
Local No. 2081, Harbor, Oregon.
Local No. 1223, Coos Bay, Oregon.
Local No. 1096, Coquille, Oregon.
Local No. 1427, Gold Beach, Oregon.
Local No. 1879, Reedsport, Oregon.

PILEDRIVER, BRIDGE, DOCK & WHARF BUILDERS & DIVERS
Local No. 2419, Astoria, Oregon.
Local No. 1223, Coos Bay, Oregon.
Local No. 1936, Kelso-Longview, Washington.
Local No. 2416, Portland, Oregon.
Local No. 1879, Reedsport, Oregon.

PORLAND & VICINITY DISTRICT COUNCIL OF CARPENTERS, Labor Temple, Portland, Oregon.
Local No. 2130, Hillsboro, Oregon.
Local No. 2275, Newberg, Oregon.
Local No. 1388, Oregon City, Oregon.
Local No. 226, Portland, Oregon.
Local No. 583, Portland, Oregon.
Local No. 783, Portland, Oregon.
Local No. 1020, Portland, Oregon.
Local No. 2154, Portland, Oregon.
Local No. 2218, Portland, Oregon (Ship Caulkers).
Local No. 2066, St. Helens, Oregon.

MILLWRIGHTS
Local No. 1857, Portland, Oregon.

SOUTHWEST WASHINGTON DISTRICT COUNCIL OF CARPENTERS, 612 East McLoughlin Blvd., Vancouver, Wash.
Local No. 1697, Bingen, Washington.
Local No. 1466, Camas, Washington.
Local No. 1707, Longview, Washington.
Local No. 1036 (Piledrivers), Longview, Washington.

Local No. 1342, Long Beach, Washington.
Local No. 1715, Vancouver, Washington.

Oregon-Washington Carpenters-Employers Benfeit Funds

U. S. National Bank, Trust Dept., Administrator, Portland, Oregon (Attn. G. M. Tretheway).

Pertinent Excerpts from Plaintiff's Exhibit No. 7

CARPENTERS
1968, 1969, 1970, 1971
MASTER LABOR AGREEMENT
CARPENTERS - PILEDRIVERS - MILLWRIGHTS
(Building, Utility, Heavy, and Highway Construction)
Between
OREGON-COLUMBIA CHAPTER, ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.
LONGVIEW-KELSO CONTRACTORS ASSOCIATION
EUGENE CONTRACTORS ASSOCIATION
ACOUSTICAL CONTRACTORS ASSOCIATION OF OREGON, INC. and
CERTAIN CONTRACTOR ASSOCIATIONS, OREG. & S.W. WASH.
and
OREGON STATE COUNCIL
PORTLAND & VICINITY DISTRICT COUNCIL
SOUTHWEST WASHINGTON DISTRICT

COUNCIL PILEDRIVERS, BRIDGE, DOCK AND WHARF BUILDERS
of the
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

THIS AGREEMENT, made and entered into as of May 1, 1968 by and between the following parties:

OREGON - COLUMBIA CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC., LONGVIEW-KELSO CONTRACTORS ASSOCIATION, EUGENE CONTRACTORS ASSOCIATION, ACOUSTICAL CONTRACTORS ASSOCIATION OF OREGON, INC., and CERTAIN OTHER ASSOCIATIONS OF CONTRACTORS THAT MAY BECOME SIGNATORIES HERETO (these parties being referred to hereinafter as the "ASSOCIATION", which word, for the purpose of this Agreement shall be read and construed to mean jointly or severally, as the context may call for, those members of the above associations whose names are set forth on Schedule "B" or supplement thereto).

and

OREGON STATE COUNCIL, PORTLAND & VICINITY DISTRICT COUNCIL, SOUTHWEST WASHINGTON DISTRICT COUNCIL, AND PILEDRIVERS, BRIDGE, DOCK AND WHARF BUILDERS of the United Brotherhood of Carpenters and Joiners of America, acting for all of their local unions, as set forth on Schedule "C" attached hereto,

which are or may hereafter be established in the territory covered by this Agreement, for themselves and by virtue of authority duly vested in them, for the individual members of their respective unions (these parties being, jointly or severally, as the context may call for, referred to hereinafter as the "UNION"), shall constitute a binding agreement upon the Association and the component bodies of the Union, acting jointly and severally for the purpose of governing the employment of individual workmen.

PURPOSES OF THIS AGREEMMENT

The purposes of this Agreement are to promote the settlement of labor disagreements by conference, to prevent strikes and lockouts, to stabilize conditions in all types of construction in the area affected by this Agreement, to prevent avoidable delays and expense, and generally encourage a spirit of helpful cooperation between employer and employee groups to their mutual advantage.

ARTICLES OF AGREEMENT

ARTICLE I
TERRITORY

This Agreement shall cover the entire State of Oregon, and the following area in the State of Washington: The counties of Klickitat, Skamania, Clark, Cowlitz, Wahkiakum and that portion of Pacific County south of a straight line made by extending the north boundary line of Wahkiakum County west to the Pacific Ocean.

ARTICLE II
WORK AFFECTED

Section 1. This agreement shall govern all types of construction work coming within the jurisdiction of the United Brotherhood of Carpenters and Joiners of America as recognized by the AFL-CIO Building and Construction Trades Department.

Section 2. To clarify the scope of this Labor Agreement and to thereby avoid future misunderstanding, utilities, highway and heavy construction work is defined as including but not limited to the following: Construction and reconstruction of roads, streets, highways, alleys, sidewalks, guard rails, fences, parkways, parking areas, athletic fields, airports, railroads, street railways, bridges, overpasses, underpasses, grade separations, grade crossings, track elevations, elevated highways, sewers, water mains, foundations, piledriving, sanitation projects, irrigation projects, flood control projects, reclamation projects, reservoirs, dams, dikes, levees, revetments, channels, aqueducts, channel cutoffs, jetties, breakwaters, harbor developments, docks, piers, abutments, retaining walls, transmission lines, pipelines, duct lines, subways, shafts, tunnels, excavation of earth and rock, clearing and grubbing, land leveling, quarrying, industrial plant construction other than building construction as defined below: including operation, maintenance and repair of land and floating plant equipment, vehicles and other facilities used in connection with the described work and service, and all other work of similar nature.

Building construction work shall cover but not be limited to the construction of residential, commercial or industrial structures, and the on site work necessary for assembly, erection and installation of facilities and equipment in or on such structures, including any and all modifications, additions and repairs thereto.

Section 3. The terms of this Agreement shall also apply to that work performed at temporary facilities, such as fabrication yards and/or assembly plants located at or adjacent to the construction site, which are integrated with and set up for the purpose of servicing the construction project or projects; rather than to serve the public generally.

Section 4. See Carpenters, Millwrights, Piledrivers Schedules "A" for the appropriate wage rates and character of work.

ARTICLE III
EFFECTIVE DATE - DURATION - MODIFICATION

Section 1. When executed by the parties hereto, the terms of this Agreement shall become effective as of May 1, 1968, or with the nearest payroll period to May 1, 1968, except as otherwise indicated herein, and shall remain in full force and effect until and including May 31, 1971, and thereafter as provided in this Article.

Section 2. Any party hereto desiring termination, modification or changes in this Agreement to take

effect subsequent to May 31, 1971, or to take effect for any agreement year subsequent to May 31, 1971, shall serve written notice on the other party at interest on or before March 1, prior to the end of each such agreement year, requesting negotiation.

If no such notice is given, this Agreement shall continue in full force and effect from year to year.

(See Carpenters, Millwrights and Piledrivers Schedules "A" for effective dates of wage rate increases.)

ARTICLE XVII
HEALTH AND WELFARE

Section 1. In addition to the wage scales listed in Schedules "A" herein, all persons, parties, firms or corporations as listed in Schedule "B", or otherwise coming under the scope of this Agreement, who are, or may become signatory parties to this Agreement, agree that the existing Health and Welfare Trust Fund as established January 1, 1956, shall continue in full force and effect for the purpose of providing Health and Welfare benefits for all eligible employees covered by this Agreement, and shall pay into the existing Oregon-Washington Carpenters-Employers Health and Welfare Trust Fund the sum of twenty-five cents (25c) per compensable man-hour effective May 1, 1968 to and including May 31, 1971. Such payments shall be made monthly in accordance with the requirements of the Trust Agreement, and all applicable provisions of the existing Trust Agreement, shall continue in full force and effect. The fund es-

tablished by prior contributions shall be recognized as a fund held in trust, and therefore an appropriate depository for the contributions referred to herein above.

Section 2. It shall be a violation of this Agreement for the Union to allow workmen covered by this Agreement to work for an employer who fails, after due notice, to make the proper contributions to the Health and Welfare Fund in accordance with the provisions of this Agreement.

Section 3. In the event a contractor fails to make the monetary contributions in conformity with this Article of the Agreement, the Union is free to take any economic action against such contractor is deems necessary, and such action shall not be considered a violation of this Agreement.

ARTICLE XVIII
PENSION

Section 1. In addition to the wage scales listed in Schedules "A" herein, all persons, parties, firms or corporations as listed in Schedule "B", or otherwise coming under the scope of this Agreement, who are, or may become signatory parties to this Agreement, agree that the existing Pension Trust Fund as established July 1, 1962, shall continue in full force and effect for the purpose of providing Pension benefits for all eligible employees covered by this Agreement, and shall pay into the existing Oregon-Washington Carpenters-Employers Pension Trust Fund the

sum of twenty cents (20c) per compensable man-hour effective May 1, 1968 to and including April 30, 1969 and twenty-five cents (25c) per compensable man-hour thereafter to and including May 31, 1971. Such payments shall be made monthly in accordance with the requirements of the Trust Agreement, and all applicable provisions of the existing Trust Agreement shall continue in full force and effect. The fund established by prior contributions shall be recognized as a fund held in trust, and therefore an appropriate depositary for the contributions referred to herein above.

Section 2. It shall be a violation of this Agreement for the Union to allow workmen covered by this Agreement to work for an employer who fails, after due notice, to make the proper contributions to the Pension Fund in according with the provisions of this Agreement.

Section 3. In the event a contractor fails to make the monetary contributions in conformity with this Article of the Agreement, the Union is free to take any economic action against such contractor it deems necessary, and such action shall not be considered a violation of this Agreement.

ARTICLE XIX
VACATION FUND

Section 1. In addition to wage scales listed in Schedules "A" herein (Carpenters, Millwrights and Piledrivers) all employers shall pay into the Oregon-

Washington Carpenter's Vacation Trust Fund the sum of ten cents (10c) for each compensable man-hour effective May 1, 1968 to and including April 30, 1969,, twenty cents (20c) for each compensable man-hour effective May 1, 1969 to and including April 30, 1970 and twenty-five cents (25c) for each compensable man-hour effective May 1, 1970 to and including May 31, 1971. Such payments shall be made monthly in accordance with the requirements of the Trust Agreement.

Section 2. It is further agreed that the trust fund established for the purpose of providing vacation shall be jointly established and equally administered by Trustees from the Union and the Association.

Section 3. It shall be a violation of this Agreement for the Union to allow workmen covered by this Agreement to work for an employer who fails, after due notice, to make the proper contributions to the Vacation Fund in accordance with the provisions of this Agreement.

Section 4. In the event a contractor fails to make the monetary contributions in conformity with this Article of the Agreement, the Union is free to take any economic action against such contractor it deems necessary, and such action shall not be considered a violation of this Agreement.

ARTICLE XX
APPRENTICESHIP FUND

Section 1. In addition to wage scales listed in Schedules "A" (Carpenters, Piledrivers, and Millwrights) all employers shall pay into the Oregon-Washington Carpenters' Apprenticeship Trust Fund the sum of two cents (2c) for each compensable manhour effective May 1, 1968 to and including April 30, 1969, and three cents (3c) for each compensable manhour effective May 1, 1969 to and including May 31, 1971.

The existing Oregon-Washington Carpenters' Apprenticeship Trust Fund as established May 1, 1965 shall continue in full force and effect, shall be recognized as a fund held in trust, and thereafter an appropriate depositary for the contributions referred to herein above.

Section 2. It is further agreed that the trust fund established for the purpose of providing training for apprenticeship, trainee and journeyman training shall be jointly established and equally administered by trustees from the Union and the Association.

Section 3. It shall be a violation of this Agreement for the Union to allow workmen covered by this Agreement to work for an employer who fails after due notice to make the proper contributions to the Apprenticeship Fund in accordance with the provisions of this Agreement.

Section 4. In the event a contractor fails to make

the monetary contributions in conformity with this Article of the Agreement, the Union is free to take any economic action against such contractor it deems necessary, and such action shall not be considered a violation of this Agreement.

IN WITNESS WHEREOF, this Agreement, including Schedules "A", "B", "C" and other attachments hereto, has been executed by the parties hereto, on this 28th day of May, 1968.

FOR THE UNION:

The following persons from the four Union identities—OREGON STATE COUNCIL OF CARPENTERS, PORTLAND & VICINITY DISTRICT COUNCIL OF CARPENTERS, SOUTHWEST WASHINGTON DISTRICT COUNCIL OF CARPENTERS and the PILEDRIVERS, BRIDGE, DOCK & WHARF BUILDERS & DIVERS—are duly authorized to sign not for themselves but for and on behalf of the Local Unions and District Councils as listed on Schedules "C" herein.

ROBERT J. CALEY
E. B. WEBER
E. A. SCHLECHT
ROY COLES
BRUCE BRADSHAW
C. D. BOWEN
RALPH E. MYERS
J. N. OLIN

ATTESTED BY:
L. J. HILLER

FOR THE ASSOCIATION:

OREGON-COLUMBIA CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.
H. A. ANDERSEN, President
HARRY A. DICK JR., Chairman
Carpenter Negotiating Committee
KENNETH W. TWEDT, Manager

LONGVIEW-KELSO CONTRACTORS ASSOCIATION
J. J. FLASKERUUD, President
HARRY R. CALBOM, JR., Exec. Secretary

EUGENE CONTRACTORS ASSOCIATION
BYRON NELSON, President
KENNETH PRATT, Secretary

ACOUSTICAL CONTRACTORS ASSOCIATION OF OREGON, INC.
VERN WILDE, President

UNION SIGNATORS TO THE 1968-1969-1970 LABOR AGREEMENTS

(Street address and phone number have been deleted)

OREGON STATE COUNCIL OF CARPENTERS
420 Labor Center, Portland, Oregon 97201.
Local Union No. 573, Baker, Oregon.
(Covers La Grande and Ontario areas).
Local Union No. 814, Grants Pass, Oregon.
Local Union No. 933-Local Union No. 1776, Hermiston, Oregon.
Local Union No. 190, Klamath Falls, Oregon.
Local Union No. 2067, Medford, Oregon.
Local Union No. 1961, Roseburg, Oregon.

CENTRAL OREGON DISTRICT COUNCIL,
207 West Third, The Dalles, Oregon 97058.
Local Union No. 1277, Bend, Oregon.
Local Union No. 1896, The Dalles, Oregon.

CLATSOP DISTRICT COUNCIL, P.O. Box 124,
Astoria, Oregon
Local Union No. 780, Astoria, Oregon.
Local Union No. 1502, Seaside, Oregon.
Local Union No. 1760, Tillamook, Oregon.
Local Union No. 2084, Warrenton, Oregon.

COAST-WILLAMETTE DISTRICT COUNCIL,
1059 N. 33rd St., Corvallis, Oregon 97330.
Local Union No. 2133, Albany, Oregon.
Local Union No. 2181, Corvallis, Oregon.
Local Union No. 1273, Eugene, Oregon.
Local Union No. 1848, Newport, Oregon.
Local Union No. 1065, Salem, Oregon.

SOUTHWESTERN OREGON DISTRICT COUNCIL, Pony Village, North Bend, Oregon 97459.
Local Union No. 1543, Bandon, Oregon.
Local Union No. 2081, Harbor, Oregon.
Local Union No. 1223, North Bend, Oregon.
Local Union No. 1096, Coquille, Oregon.
Local Union No. 1879, Reedsport, Oregon.

PILEDRIVER, BRIDGE, DOCK & WHARF BUILDERS & DIVERS
Local Union No. 2419, Astoria, Oregon.
Astoria, Oregon.
Local Union No. 1223, North Bend, Oregon.

Local Union No. 2416, Portland, Oregon.
Local Union No. 1879, Reedsport, Oregon.

PORTLAND & VICINITY DISTRICT COUNCIL OF CARPENTERS, 421 Labor Center, Portland, Oregon 97201.
Local Union No. 2130, Hillsboro, Oregon.
Local Union No. 2275, Newberg, Oregon.
Local Union No. 1388, Oregon City, Oregon.
Local Union No. 226, Portland, Oregon.
Local Union No. 583, Portland, Oregon.
Local Union No. 738, Portland, Oregon.
Local Union No. 1020, Portland, Oregon.
Local Union No. 2154, Portland, Oregon.
Local Union No 2218, Portland, Oregon (Ship Caulkers).
Local Union No. 2066, St. Helens, Oregon.

MILLWRIGHTS
Local Union No. 1857, Portland, Oregon.

SOUTHWEST WASHINGTON DISTRICT COUNCIL OF CARPENTERS,
612 McLoughlin Blvd., Vancouver, Wash.
Local Union No. 1707, Longview, Washington.
Local Union No. 1715, Vancouver, Washington.

Oregon-Washington Carpenters-Employers Benefit Funds, U. S. National Bank, Trust Dept., Administrator, P.O. Box 3168, Portland, Oregon (Attn. G. M. Tretheway).

The following members of the Oregon-Columbia Chapter, Associated General Contractors, are signa-

tory, through this Association, to the AGC-Carpenters Master Labor Agreement:

H. A. Andersen Co.
Guy F. Atkinson Co.
Ausland Const. Co.
Ausum Company
Babler Bros., Inc.
Gary Baker, Contractor
Batterman Construction, Inc.
Baughman & Son, Inc.
Beaver Excavating Co.
Besco Construction Co.
Blanchard Construction Co.
Blickle Co.
Gus J. Bouten Construction Co.
Howard Brewton General Contractor, Inc.
Brockamp & Jaeger, Inc.
C&E Construction Co., Inc.
Calabrese & Sons, Inc.
Campbell Construction Co. of Sacramento
Cascade Construction Co.
Casey and Lind Construction Co.
Chaney & James Construction Co., Inc.
Cipriano Construction Co.
J. C. Compton Co.
J. N. Conley, Inc.
Contractors, Inc.
Don L. Cooney, Inc.
Coral Corporation
Curtis Const. Co. & M. G. Curtis Company, Inc., a Joint Venture
Dalke Construction Co., Inc.
G. D. Dennis & Sons, Inc.
Dorman Construction Co.
Donald M. Drake Co.
C. & H. Durbin Construction Co.
Earley Construction Company
Paul B. Emerick Co.
Erickson Paving Company
Erland Construction Company
Excavators, Inc. dba Pacific Northern Construction, Inc.
Fiorito Bros., Inc.
N. Fiorito Co., Inc.
A. D. Ford and Son, Inc.
Forster Construction Co., Inc.
General Construction Company
Georgeson & Co., Inc.
Gibbons & Reed Co.
Goodat Crane Service
Goodfellow Bros., Inc.
Great Lakes Dredge & Dock Company
W. H. Gregory Company
Grimstad and Vandervelt, Inc.
Groesbeck-Durbin, Inc.
E. C. Hall Construction Co.
O. I. Hall Company, Inc.
Carl M. Halvorson, Inc.
H. Halvorson, Inc.
Halvorson-Mason
Hamilton Construction Co.
Ross B. Hammond Co.
Warren K. Hanley
Hannan Bros. Co.
Waldo S. Hardie & Son
Warren W. Harding & Sons
The Hart Construction Company
Hawk & Munson, Inc.
Heinkel Mechanical Contractors
R. A. Heintz Construction Co.
Willis A. Hill, General Contractor
Vern Hoaglin Const. Co., Inc.
Hoffman Construction Co.
Horton Construction Co.
Hughes & Dodd Co.
Inland Construction Co.

E. H. Itschner Co.
K. F. Jacobsen & Co., Inc.
Vernie Jarl
Percy E. Jellum, Contractor, Inc.
Jensen-Green, Inc.
Lester N. Johnson Co.
Melvin S. Johnson Construction Co.
George I. Johnston Co., Inc.
Juhr & Sons, Oreg. Ltd.
G. E. Kibbe, Contractor
Peter Kiewit Sons' Co.
J. F. Konen Construction, Inc.
Lake City Contractors, Inc.
H. A. Lind Construction Co.
Oscar A. Lakanen, Inc.
C. A. Lantz Construction Co.
Lawson Construction Co.
Tom Lillebo Construction Company
Lindquist Construction
M. C. Lininger & Sons, Inc.
Tor Lyshaug
Lockheed Shipbuilding & Construction Company
Lord Bros. Contractors, Inc.
Frank Lyons & Co., Oregon Ltd.
MacGregor Triangle Co.
Mann Construction Co.
Marion Construction Co., Inc.
Henry M. Mason Co.
Matich Constructors
L. S. Matusek
F. H. McEwen Construction Co.
Earl McNutt Co.
McNutt & Sons, Inc.
Mercer Steel Co., Inc.
Meyer Construction Company
Mills Construction Company, Inc.
Minden Construction, Inc.
C. J. Montag & Sons, Inc.
Geo. A. Moore & Associates, Inc.
William J. Moran Company
L. A. Morgan, Contract Trucking
Robert D. Morrow, Inc.
S. S. Mullen, Inc.
O & K Construction Co.
Jay F. Oldham
C. R. O'Neil
Oregon Asphaltic Paving
Oregon Erecting Co.
Osberg Construction Co.
Glen Ousley Construction Co.
Pacific Sand & Gravel Co.
Page Paving Company
Palmberg Construction Co.
Paramount-Pacific Corp.
Charles T. Parker Construction Co.
Pearson & Prade, Inc.
Dale Pence General Contractor
A. V. Petersen Co.
Portland Center Building Co.
Raymond Concrete Pile Division, Raymond International, Inc.
Reimers & Jolivette
Loren S. Ritchie
Robertson, Hay & Wallace
Rogers Construction Co.
Rogue River Paving Co., Inc.
Ross Bros. Construction, Inc.
Rumsey & Co., Inc.
Salem Sand & Gravel Co. (Construction Division)
Harold W. Salter
Sather & Sons, Inc.
E. Carl Schiewe
Schmidt & Smith Contractors
Charles Schmiedeskamp, Inc.

Schrader Const. Co., Inc.
Schultz & Lindsay Construction Company
E. E. Settergren
A. H. Sheer
Eldon Shields Construction Co.
W. H. Shields Co.
L. D. Shilling, Inc.
J. D. Shotwell Company
Sime Construction Company
W. C. Sivers Co.
Fred H. Slate Co., Oreg. Ltd.
Slate-Hall
Smith-Farrens Co.
Smith and Nelson, Contractors and Engineers
F. L. Somers
F. L. Somers, Inc.
Soule' Steel Company
S. D. Spencer & Son
Stach Construction Co., Inc.
J. M. Steinmuller, Jr. Company
Stevenson Construction Co.
Strand Incorporated
Strong & MacDonald, Inc.
Fred Stubbert Concrete Cons't. Co.
Teeples & Thatcher, Inc.
Teller Construction Company
Thompson Construction, Inc.
Donald W. Thompson, Inc.
Todd Building Company
N. A. Toole Const. Co.
Tru-Mix Construction & Gunite Div. of Concrete Steel Corp.
Umpqua River Navigation Company
The United Contracting Company
Vik Construction Co.
Vinnell-McNamara-Mannix-Fuller
Cloyd R. Watt Const. Co.
Western Pacific Construction Co.
Western Pacific Piledriving Co.
Western Rock, Inc.
Weston Construction Co.
White Bros Construction Co., Inc.
Wickman Construction, Inc.
Wildish Construction Co.
Jed Wilson & Son
Winston Bros. Company
Yardley Drilling Co., Inc.
Porter W. Yett Company

Plaintiff's Exhibit No. 8

OREGON STATE BUILDING & CONSTRUCTION TRADES COUNCIL ARTICLES OF AGREEMMENT

THIS AGREEMENT is entered into this 7th day of February, 1962, by and between Wendell Hiatt hereinafter referred to as the EMPLOYER, and the OREGON STATE BUILDING & CONSTRUCTION

TRADES COUNCIL, hereinafter referred to as COUNCIL.

I

The EMPLOYER agrees that all work performed under the jurisdiction of any union affiliated with the COUNCIL shall be performed pursuant to an executed current agreement and any subsequent agreement with the appropriate union having work and territorial jurisdiction and affiliated with the COUNCIL, provided said agreement is not in violation of the Labor Management Relations Act of 1947, as amended.

II

Except as herein provided, the EMPLOYER agrees to abide by all of the terms and conditions of the agreements of the respective crafts employed, including wages, hours, working conditions, health and welfare benefits, pension benef and other fringe benefits and hereby adopts s Trust or Fund Agreement of each respective union for such fringe benefits and agrees to the appointment of Employer Trustees or their successors.

III

The EMPLOYER agrees to abide by and to give full force and effect to the hiring provisions and union security clauses of the appropriate agreements of the respective crafts employed to the full extent permissible, provided said agreements are not in violation of the Labor Management Relations Act of 1947, as amended.

IV

The EMPLOYER agrees that if he shall subcontract any work, provision shall be made in such subcontract for all of the work performed by said subcontractor coming under the jurisdiction of any union affiliated with said COUNCIL to be performed pursuant to an executed current agreement and any subsequent agreement with the appropriate union having work and territorial jurisdiction affiliated with the COUNCIL.

V

The EMPLOYER agrees that if in the event he subcontracts any work and the subcontractor fails to pay the wages or fringe benefits provided under the appropriate agreement with the union affiliated with the COUNCIL, the EMPLOYER shall become personally liable for such sums, and such sums shall immediately become due and payable by the EMPLOYER.

VI

In the event that the EMPLOYER or any of his subcontractors fails to execute a current agreement with the appropriate union, as hereinabove provided, the EMPLOYER shall be liable for wages of all work performed by mechanics and laborers employed, computed at wage rates not less than those certified by the Secretary of Labor under Davis-Bacon Act.

VII

It is mutually agreed that any provision in the agreements of the respective crafts covering or relating to the subjects of Strikes, Lockouts, Procedure

for Settlement of Grievances and Disputes, the Selection and Functioning of Tribunals for Arbitration and the Settlement of Jurisdictional Disputes shall not be binding upon the COUNCIL except as herein provided.

VIII

In the event of any jurisdictional dispute between the unions affiliated with the COUNCIL, the matter shall be determined in the manner and by the procedure established by the National Joint Board for the Settlement of Jurisdictional Disputes, or in the event the National Joint Board for the Settlement of Jurisdictional Dispute is abolished, the procedures established by the Building & Construction Trades Department, AFL-CIO, shall prevail.

IX

In the event that the EMPLOYER violates any provision of this Agreement or fails to abide by a decision of the National Joint Board, as provided in Paragraph VIII, or in the event that any subcontractor fails to abide by the appropriate agreement, it will not be a violation of this agreement for the COUNCIL to place said EMPLOYER on the "unfair liist" of the COUNCIL. In the event that any EMPLOYER or subcontractor is placed on the unfair list, it shall not be a violation of this agreement for any employee to refuse to perform any work or enter upon the premises of the EMPLOYER, nor shall it be a violation for anyone to induce said employee to refuse to perform any work or enter upon the

premises and under the circumstances shall not be subject to discharge or any other disciplinary action.

It is further agreed that no employee working under this Agreement need work under any conditions which may be or tend to be detrimental to his health, safety, morals or reputation, or cross any picket line or enter any premises at which there is a picket line authorized by the COUNCIL, or any other Building and Construction Trades Council or authorized by any Central Labor Council, or handle, transport or work upon or with any product declared unfair by any of such Councils. The EMPLOYER agrees that he will not assign or require any employee covered by this agreement to perform any work or enter premises under any of the circumstances above described, and will conform to all health and safety regulations of the State of Oregon.

The EMPLOYER further agrees that all materials, supplies or equipment used on the job by the EMPLOYER or any subcontractor shall be transported to or from the site of the work by persons employed under a collective bargaining agreement with the appropriate craft union, provided, however, that nothing herein contained shall be construed to prohibit the normal delivery of freight by railroad.

During the Time of any violation of any of the provisions of this Agreement by the EMPLOYER, the COUNCIL and affiliated Unions shall be released and relieved of any obligations to furnish workmen to the EMPLOYER.

X

This Agreement shall become effective at the date hereof and remain in full force and effect from year to year hereafter unless either party gives at least sixty (60) days' written notice to the other party of its desire to modify or terminate this Agreement.

EMPLOYER	OREGON STATE BUILDING & CONSTRUCTION TRADES COUNCIL
Wendell Hiatt	I. J. Darr President
	Secretary
	610 Willamette St., Rm. 218, Eugene, Oregon
Telephone DI 4-1457 (24 Mobile)	DIamond 4-0215

Submitted by:

Business Representative, Craft and Local Union No.

APPENDIX C

STIPULATION
(Filed November 19, 1968)

IT IS HEREBY STIPULATED by Paul T. Bailey, as attorney for plaintiffs and Henry J. Camarot, as attorney for defendant:

That had Jack Costello, manager for Consolidated Supply Company, 110 Garfield North, Eugene, Oregon, been called as a witness in this case, he would have testified as follows: Consolidated Supply Company is in the wholesale supply business of plumbing materials to plumbing businesses in the State of Oregon and particularly to the Eugene-Springfield area; that among the businesses it supplies are Clarence Vos Plumbing, Eugene, Oregon; Coburg Plumbing, Coburg, Oregon; and Fridlund Plumbing, Eugene, Oregon; that the plumbing materials Consolidated supplies to these businesses are all manufactured outside of the State of Oregon and shipped to Consolidated in Oregon, except soil pipe of five feet in length or less and roof flashings; that soil pipe and roof flashings comprise not in excess of 5% in value of the average plumbing material cost for a house or apartment.

That had Richard Rower, manager of Tillman and Booth, Inc., 215 Fifth Street West, Eugene, Oregon, been called as a witness in this case, he would have testified as follows: That Tillman and Booth, Inc. is in the wholesale plumbing supply business and

that among the businesses it supplies in the State of Oregon are Clarence Vos Plumbing, Eugene, Oregon; Coburg Plumbing, Coburg, Oregon; and Fridlund Plumbing, Eugene, Oregon; that the plumbing materials supplied these specific businesses are all manufactured outside of the State of Oregon and shipped to Tillman and Booth in the State of Oregon, except soil pipe of five feet or less. Soil pipe of over five feet is manufactured in Carona, California, and shipped to Tillman and Booth from Carona; that the soil pipe comprises less than 5% in value of the average plumbing material cost for a house or an apartment.

That had John Stirek, manager of Peerless Pacific Company, 2238 N. Interstate Avenue, Portland, Oregon, been called to testify in this case, he would have testified as follows: Peerless Pacific Company, of which he is manager, is in the wholesale supply business of plumbing materials to plumbing businesses in the State of Oregon and that among the businesses it supplies are Coburg Plumbing, Coburg, Oregon, and Fridlund Plumbing, Eugene, Oregon; that the plumbing materials Peerless Pacific supplies to these businesses are all manufactured outside of the State of Oregon and shipped to Peerless Pacific or at Peerless Pacific's direction to Coburg Plumbing or Fridlund Plumbing inside the State of Oregon, except soil pipe of five feet in length or less. Such soil pipe that is manufactured in the State of Oregon that is purchased and supplied by Peerless Pacific com-

prises less than 5% in value of the average plumbing material cost for a house or apartment.

That had George Paisley, manager of Eoff Electric Company, 556 Charneton Street, Eugene, Oregon, been called as a witness in this case, he would have testified as follows: That he, George Paisley, is manager of the Eoff Electric Company operation in Eugene, Oregon and that Eoff Electric Company is in the wholesale supply business of electric material to electrical contracting businesses in the State of Oregon and in the area of Springfield-Eugene in the State of Oregon; that among the businesses it supplies is Cook Electric, Springfield, Oregon; that the electrical materials Eoff Electric supplies to Cook Electric are all manufactured outside of the State of Oregon and shipped to Eoff Electric or at Eoff Electric's direction to the Cook Electric in the State of Oregon, except pipe straps and other metal flashing, which is made locally in the area of Springfield by one Harold Trummel; that such pipe straps or other material supplied locally comprise less than 1% in dollar value of the average electrical material costs for a house or apartment.

That had Robert W. Johnson, manager of Fridlund Plumbing, 1665 Irving Road, Eugene, Oregon, been called as a witness in this case, he would have testified as follows: That during the year 1968, Fridlund Plumbing supplied on various jobs to Wendell Hiatt plumbing material and erected the same on said properties; that these jobs and amounts were as

follows: February 8, 1968 at the address of 1721-25 Gilham Road, a contract was done for Hiatt in which Fridlund supplied $961 worth of material; on February 14, 1968 at the address of 1190-98 Norkenzie Road, Fridlund subcontract called for supplying materials in the amount of $961; that on March 5, 1968 at 1880 Norkenzie Road, Fridlund supplied on a contract with Hiatt materials in the amount of $646; that on September 12, 1968 at 5477 Donald Street, Fridlund supplied Hiatt under contract materials in the amount of $6,905; that of this total amount of materials supplied to Hiatt in 1968 of $9,473 approximately $1,970 was material that originated within the State of Oregon and that approximately $7,503 worth of material originated outside of the State of of Oregon.

Dated this —— day of ————, 1968.

PAUL T. BAILEY,
Of Attorneys for Plaintiffs
HENRY J. CAMAROT,
Of Attorneys for Defendant

APPENDIX D

TRANSCRIPT OF PROCEEDINGS

(November 19, 1968)

THE COURT: This is the time set for the case of E. B. Weber, et al against Wendell Hiatt. Are you ready for Mr. Weber?

MR. BAILEY: If the Court please, I would like to explain something at the outset here. This case was originally set for Thursday of this week, and we are now here on Tuesday. We have gotten a good number of individuals that we had asked for subpoenas on that had been served. There are some that have not been as yet. This was brought about because of the fact that the issue—one of the issues involved in this case is the question of effecting Interstate Commerce under Section 301 of the act, Taft-Hartley Act or the National Relations Act.

We had taken depositions of a certain number of sub-contractors of Mr. Hiatt. We originally took his deposition, and Mr. Hiatt had indicated he didn't know the source of the material that was put on his job. So we took a number of depositions of subcontractors of his, and in the course of taking his depositions, which we took two weeks ago, we determined that some of the suppliers to the subcontractors were either here in the Eugene area or I think on one or two occasions in Portland. The ordinary course of events was that these subcontractors received their

material from a supplier who, upon our inquiry of them, obtained their material directly from factories outside—or sources outside the State of Oregon.

We proposed a stipulation to counsel, and it wasn't satisfactory to counsel. So we have endeavored to bring most of those suppliers in here.

Now, one of the questions we have been asked this morning before court started was whether or not, because we have now talked about the material that originates outside of the State of Oregon for suppliers—by these suppliers to subcontractors, that in addition to that, are we entitled to go into the total business of that supplier as done in some of these other cases. We have asked for them to bring the records in to show their gross business for the year 1967 and '68. Some of those people do not have that material here because it may come from their main office in Portland rather than a sub-office here in Eugene. Some of the attorneys representing some of those parties are here in court this morning and are asking me the questions as to our rights to have this, and I thought we ought to have that decided by the Court. Maybe this is premature, but to try to decide it to facilitate the trial of this matter and to have those materials available if the Court deems that it is appropriate matter to come to the Court.

THE COURT: Well, certainly the first thing that we are going to have to decide is whether this Court has any jurisdiction over this case or not. I am aware that the case was filed way back in January and pro-

gressed through normal channels, and that you, Mr. Bailey, relied — and had every right to — upon Judge Solomon's ruling in Weber versus —.

MR. BAILEY: Bernard.

THE COURT: — Bernard Hiatt, even though the pretrial order dated July 9. And then sometime later than that, in August, our Court of Appeals clarified the law, or at least told us what the law is in this area. But the natural inquiry that comes to my mind, is the case at hand different than the Bernard Hiatt case?

MR. BAILEY: Well, I will say this, Your Honor: We didn't go up on the Bernard Hiatt case because, although we may disagree with the Ninth Circuit, we were bound by it, I think that's correct. There are different facts in this respect, and I think it is based primarily on the fact that we didn't go deeply enough into the Interstate Commerce aspect as may be provided by and allowed by Section 301 of the act.

I think the record would show that there was an amount of $5600 to $8,000 in the years in question. I think what was involved there, that was not even there specifically spelled out that it came from Interstate Commerce. We submit that we can show a substantially greater amount than that by the records so far. We think that we are entitled to go beyond what is done merely by way of the amounts of money expended for material supplied to this particular employer, Mr. Wendell Hiatt, but also to discuss or to put into the record the amount of Interstate Commerce involved in the suppliers on this job — these jobs of Mr. Hiatt.

So I think there is a distinction between Bernard Hiatt and what we are here prepared to present.

THE COURT: And the difference is that you are prepared to show that Wendell Hiatt's subcontractor purchased materials in some quantities directly outside the State of Oregon?

MR. BAILEY: Well, I think in the main, they purchased from suppliers who got them directly from outside the State of Oregon. And we have those suppliers here in Court, or at least a number of them here.

THE COURT: The subcontractors purchased from suppliers, who got their materials outside the State of Oregon?

MR. BAILEY: Yes, As an example, I think that Foss Plumbing is an example. They had a contract to put material on this job, obtained material directly from Consolidated Supply who got it from outside the State.

THE COURT: Well, all right. I would like to hear from Mr. Camerot.

MR. CAMEROT: Your Honor, directing my remarks initially to what I understand to be Mr. Bailey's indication at the amount, Mr. Bailey indicated he submitted a stipulation to us regarding what certain witnesses would testify to. We didn't agree at the time; and accordingly, he indicates today that he subpoenaed these witnesses. These witnesses are here, and he has asked them for some various documents, financial statements, et cetera.

I would like to accommodate the Court, Mr.

Bailey and these witnesses on the time aspect. And if I may first of all direct my remarks in that regard, with respect to the stipulation that was submitted by Mr. Bailey, the problem I had, he had some five witnesses here, three of whom are the suppliers. One is an electrical supplier, three are plumber suppliers, and then finally he had a plumbing contractor, subcontractor.

Now, the reason why—and unfortunately, we got these Wednesday. We were in Portland, not able to get in touch with some of these people until Friday, and all of the time, I was in Eugene. But in any event, what we would like to do is to accommodate Mr. Bailey.

My feeling was that there were no times set forth here, there were no amounts set forth here with respect to the statements of the suppliers. And for this reason, I felt that this might have some importance insofar as amounts of materials sold to subcontractors, sold to Mr. Hiatt.

Now, Your Honor, we don't agree with Mr. Bailey that a three-time removed purchaser from Interstate Commerce gives this Court jurisdiction with respect to a contractor, because we feel that it doesn't go beyond the contractor himself and how he affects Interstate Commerce. But for the purposes of at least alleviating an immediate problem, I think there is one witness we would ask to stay here; Mr. Johnson. So far as the other witnesses are concerned, rather than think that we may spend a day or two

just in getting these various documents before this Court and explained, we would say to the Court in the interest of time that we would agree to the stipulation insofar as Mr. Costello, Mr. Rower, and Mr. Stirick, and agree only that this is what they would testify to, but not agree as to its relevancy, its materiality, or how it would bear on any particular case.

Now, that will assist him in the first plight, that first problem that he posed to this court, Your Honor, we would agree. The same thing —

THE COURT: This is only one witness to the stipulation?

MR. BAILEY: Two .

THE COURT: Two?

MR. BAILEY: I think you overlooked Mr. Paisley.

MR. CAMEROT: Oh, Mr. Paisley also. We would ask Mr. Johnson to remain. But as far as the other three witnesses, if it would lend him some assistance, we would have no objection to the stipulation.

MR. BAILEY: In response to counsel, I have no objection to Mr. Johnson. He, by the way, was a subcontractor of Mr. Hiatt's who had made an error in looking at his subpoena to appear for earlier deposition, and that is the reason we supply this for him. He is not in the same category as the others. He's a sub rather than the supplier.

Now, the other factor, now that these parties were brought here because of the lack of stipulation on it, we were interested in whether or not the Court

would be interested in this record. And we would urge at this stage the total Interstate Commerce that these people are involved in—I'm speaking of the suppliers—and their total amount of business. This is the question I was asking the Court earlier.

THE COURT: Well, I suppose the inquiry should be whether or not it is relevant.

MR. BAILEY: I think that is correct.

THE COURT: I want to hear it if it is relevant and important, and I don't want to if it isn't. So we have another Hiatt case staring us in the face, and from that, as I understand it, we learn that a contractor purchases his goods from a supplier, that it makes no difference whether it was manufactured outside of the State of Oregon.

Now, how does it help us to put another person in between and say that if a contractor purchases rom—deals with a subcontractor, who deals with a upplier, who gets his goods from outside the State of Oregon, does that make some difference?

MR. BAILEY: Well, I will say this: That in other cases, and I cite to the Court NLRB versus Aurora City Lines as a case involving a transit system that purchased goods locally from other persons that originated—it doesn't spell out in the case as to its source or origination. Of course, this may be in conflict with the decision in the Bernard Hiatt case, because in the Aurora case, the Third Circuit Court of Appeals determined that the amount of $2,000 worth of goods purchased local that originated outside the State of Illinois was not de minimis. So that

could be a conflicting situation. But in a number of cases, the question of the amount of Interstate Commerce of another corporation or company doing business with the company involved has been looked at to determine whether or not the issue of effecting Interstate Commerce has been touched upon, whether it has been involved. It is not necessarily whether this particular company is in Interstate Commerce but whether there is Interstate—whether he is in an industry or that the union is in an industry that affects Interstate Commerce.

THE COURT: That is true.

MR. BAILEY: So I think it was used in the Denver Building Trades case where it said that it has the tendency of dropping a rock into the water, it spreads. It is not necessarily that it is directly involved in the Interstate Commerce, but it spreads and affects others. And this, as I say, is why we think we are entitled to get that information.

THE COURT: Well, it seems to me that the way to approach this would be for you, Mr. Bailey, to tell me what you hope to be able to show by the way of evidence to establish this Court's jurisdiction.

MR. BAILEY: All right.

THE COURT: And realizing that maybe you will or maybe you will not be able to produce, as you hope to. But assuming that you do and are able to, then before you call any witnesses, it seems to me that we should have a discussion about whether, assuming you are completely successful, this Court still has jurisdiction of the case.

MR. BAILEY: Yes, Your Honor. In that connection, we have, as we said, taken the deposition of Mr. Hiatt, who has advised in his deposition that he has —taking the most recent years, '67, a portion of '68 —put up a twenty-six unit apartment house, some three duplexes and a number of residences; that, in my recollection, in the year of 1967, had a gross income of over 200,000. And I don't know the figures for 1968. I don't think they are in the deposition. The suppliers of his are named in the depositions we took earlier; and I'm speaking of the plumbing suppliers, three different ones over the years 1962 to the present, which is the term of the contract, the union contract involved here; and that those three suppliers, during these specific years—and I'm speaking of 1967 and '68—the plumbing and electric subcontractors had—(pause as counsel examines document) they are in my notes here. They had some twenty-two or $24,000 worth of material that was supplied to Mr. Hiatt's projects in the year '67 and approximately twenty-eight or $30,000 in the year so far of 1968. These were materials that originated outside the State of Oregon and were affixed to the houses or apartments that Mr. Hiatt was building. We have checked—the subcontractors themselves had no specific knowledge as to the source, except that some of the materials arrived in their original package. And I think the Court is aware of the early Brown decision of the original package in Interstate Commerce, that it continued to be in Interstate Commerce until it comes to rest permanently; that those

that arrive in the original package have no question about being in Interstate Commerce; and of the others, a very small percentage—I should say all but a very small percentage originate outside of the State of Oregon.

Now, that basically, I believe, is the testimony that we will have to present here to the Court on the issue of material that originated outside the State of Oregon and as applied to houses and apartments that Mr. Hiatt builds and as to the amount.—

THE COURT: It is your feeling that the subcontractors removed the goods from the original package which traveled in Interstate Commerce?

MR. BAILEY: Some of the testimony was that they did it in their shop. Some of it was that they did it at the job site itself, of Mr. Hiatt's. This is in the deposition.

THE COURT: All right.

MR. BAILEY: Now, in addition to that, we would not know the amount of Interstate Commerce or the total amount of business done by suppliers, but we suspect that because of their size, they are in excess of a million dollars a year and in total certain.

And that basically is what we think our evidence will be on that factor.

MR. CAMEROT: Will the Court hear me?

THE COURT: Yes.

MR. CAMEROT: I assume the Court has a copy of the Bernie Hiatt decision —

THE COURT: I do.

MR. CAMEROT: — before him? I would call the Court's attention to the second page, if I may wherein the Ninth Circuit specifically made note of the amount of gross income average, the annual gross income average, which was approximately $150,000. There is some suggestion that the evidence here will show that it is $200,000, which we would disagree with. But I think more important, Your Honor, is the next to the last paragraph, which says: "The terms 'In Commerce' or 'Industry Affecting Commerce' or broadly defined. Many authorities require a direct purchase of materials from another State, usually in comparatively substantial quantities, to find jurisdiction. The size of a particular business or the actual dollar value of commerce conducted alone is not determinative of the question."

And then the Court will note the points of importance that the opinion records as establishing the appellant's activities and then concluding that there was no jurisdiction because of the lack of Interstate Commerce. And the testimony here will show, and I don't believe Mr. Bailey would disagree, that the contractor did not conduct business outside of Oregon, there was no subcontract with contractors engaged in business outside the State of Oregon, no purchase of materials or supplies from persons outside of Oregon by the contractor. I don't think there would be a disagreement by Mr. Bailey, nor has he suggested any affirmative evidence, that there was any contract with subcontractors outside Oregon, that there was any business with any firm or company of

any other states, that there was any work on any Federal, State or political subdivision projects or on any defense projects, or any work on a facility directly utilized for the purpose of Interstate Commerce.

So whereas we recognize that there may be some cases which interpret the terms "In Commerce" or "Industry Affecting Commerce" as being defined more broadly, we submit to the Court that you have in this instance the word "direct," and I think that the thrust of the opinion is that it requires direct purchases.

Now, when Mr. Bailey suggested that some of the original package of materials would reflect that it came from out of State, without going into that for the moment, I would note again that we are still talking about presumably, as I understand it, subcontractors who were buying from material men, who then order it and then it comes in. So you really have again the twice, and I suspect in some instances three-times removed independent contractor work here involved in Interstate Commerce some ultimate way along the line. So our position, Your Honor, is that nothing that he has proferred at this moment against the Bernard Hiatt case suggests that there is jurisdiction in this Court.

THE COURT: Well, that is the decision that faces me now, and it is the decision that I intend to make. And I would be delighted to hear from either of you further or read any cases that you have. Otherwise, I am prepared to rule on it.

MR. BAILEY: I would make one response to what counsel has just stated when he went through the list of statements made in the Bernard Hiatt case.

My response to that is that those items are not exclusive with respect to jurisdiction in this field. It is not necessary to prove any one or more of these particular items in order to have jurisdiction in this field, because in numerable cases, and I think in the main, the cases are that there is no requirement that the employer presently involved before the Court be the one who is directly involved in Interstate Commerce. I mean, a direct shipment to him from out of State. If that was the case, every employer in the United States could avoid the Taft Hartley Act by having somebody else be an intermediary; and that certainly is not the criteria here, and it is not the decisions of the courts either. It may be that because of the facts in the Bernard Hiatt case, that the Court, through Judge von der Heydt, made these statements in here. But those are not exclusive as to the items that need to be proved with respect to requiring jurisdiction in Interstate Commerce.

THE COURT: All right. Well, I don't know whether it is true or not, if we follow Judge von der Heydt's opinion that every contractor can avoid the Taft-Hartley law. But we are not talking about what people could do. We are talking about what people did do in this instance. And it is equally true to say that if they followed Mr. Bailey's theory, every car-

penter as a builder of houses at least would be subject to Section 301 and the jurisdiction of this Court.

Judge Solomon, for example, took judicial notice of the fact that these are plumbing and electrical supplies that did originate outside the State of Oregon. He seems to be criticized for that, although I don't understand why because I would be perfectly willing to make the same judicial determination. It is common knowledge that they are not manufactured in Oregon, that they are manufactured outside of Oregon. And I also know perfectly well that Mr. Bailey was slapped in the face at this stage in the case at a late moment, and I am sure he doesn't agree with it, and I am sure that his only recourse in order to properly represent his client would be to point out some distinction between the Bernard Hiatt case and Wendell Hiatt case. He has suggested a difference, but it is not a legal distinction, if we are going to follow, as we must, the Bernard Hiatt case. There is no possible way to reconcile a different result in this case than in the Bernard Hiatt case.

I rule that this Court has no jurisdiction over this matter.

MR. BAILEY: If the Court please, in order for this matter to be in proper form for appeal, may I suggest that at this stage, we would make an offer of proof by showing the depositions that have been taken, and I would like those to be made a part of the record on appeal. And in addition —

THE COURT: Anything we can do to assist you in perfecting the appeal, of course.

MR. BAILEY: Well, at this stage, I would like to make as a part of the record the deposition of Wendell Hiatt that was taken in this case, the deposition of Herbert Gaskail, G-a-s-k-a-i-l, the deposition of Ernest M. Wilde, W-i-l-d-e, the deposition of Charles Dumars, D-u-m-a-r-s, the deposition of Keith Guburd, G-u-r-b-u-r-d, and the deposition of Bernard Cooke, C-o-o-k-e.

In addition, and in order to clarify this record as well, we make the offer of proof by the proposed stipulation that we had made, which is our tie-in on the Interstate Commerce through the individuals named there, with the exception of Mr. Johnson.

Now, in connection with Mr. Johnson, he is the manager of the Fridlund Lumber—Plumbing Company, and we had proposed certain stipulations there with respect to the amount of work that Fridlund Plumbing Company had done for Wendell Hiatt. And I would propose that he likewise be—the proposed stipulation on him be made a part of the record as well as his testimony, or we would offer that for the record as testimony here.

THE COURT: Well, one way or the other. I'll ask another question. And the deposition of Wendell Hiatt and all the interrogatories in this case?

MR. BAILEY: Yes, the interrogatories in the case as well as the answers thereto.

THE COURT: But I am assuming, and I think I have a right to assume in all fairness, that the testimony contained in these various exhibits are not

broader than the statement that you gave me earlier? I relied upon that as being a broad statement of the facts.

MR. BAILEY: That is correct, Your Honor. It is my recollection in reading through, I made notes in respect to those depositions as to the amounts of material that they had supplied to Wendell Hiatt; and they testified that this was material they obtained from suppliers. And those figures that I gave you were the ones that were taken from the depositions. The estimations.

THE COURT: All right. Now, how should we handle the one witness in order to complete the record in this case? Do you want to make a stipulation on that now? If not, simply by way of an offer of proof, I would hear the witness' testimony.

MR. CAMEROT: Your Honor, to assist Mr. Bailey and the Court, we would agree and stipulate that the testimony of Robert W. Johnson would be as stated—that is, he would testify in accordance with the proferred record that Mr. Bailey is making.

I would like clear on the record also that the statements that I made as to there being no affirmative proof to distinguish the case, and particularly the eight items appearing in the Bernard Hiatt case, are correct. In other words, I heard no affirmative proof offered by Mr. Bailey as to the Items 1 through 8 on Pages 2 and 3 of the Opinion sheet that I made reference to. And my understanding is that when he got back up on his feet, he didn't suggest that he would have any evidence which would show such

things as construction outside of Oregon, subcontracts with the contractors engaged in business outside of Oregon. And without enumerating all eight, I did make reference to —

THE COURT: Well, I don't — do you want to comment on that? I am not going to require you to.

MR. BAILEY: I thought I made myself clear that I had not anticipated any evidence that would dwell on any of the eight points here, but my statement was directed to the fact that these are not exclusive as to the matters to be proved for jurisdiction.

THE COURT: All right, fine, I really wouldn't have required you to answer that, because I have made a judicial determination that in the statements I received, there is no proof of any of those eight elements.

All right.

(Court adjourned.)

APPENDIX E

DISTRICT COURT FINDINGS OF FACT AND CONCLUSIONS OF LAW

(as Amended)

(Filed February 3, 1969)

This matter having come on for trial on the 21st day of November, 1968, and the issue of jurisdiction having been raised by the defendant through both the pleadings and the pre-trial order and the Court having requested the plaintiffs, at the outset of the trial, to set forth the basis for this Court's jurisdiction in view of the case of *Bernard Hiatt* v. *Emil Schlecht, et al*, Civil No. 21825, decided by the United States Court of Appeals for the Ninth Circuit, on August 13, 1968, and plaintiffs' attorney having set forth certain alleged facts, and the defendant having stipulated thereto and the Court otherwise being advised;

NOW, THEREFORE, this Court makes the following Findings of Fact and Conclusions of Law:

1. The defendant did not:
   (a) engage in any activities wherein he performed any construction outside the State of Oregon;
   (b) subcontract with contractors engaged in business outside the State of Oregon;
   (c) purchase materials or supplies from persons outside the State of Oregon;
   (d) contract with subcontractors outside the

State of Oregon;

(e) do any business with any firm or company in any other states;

(f) work on any federal, state, or political subdivision projects;

(g) work on any defense projects;

(h) perform work on a facility directly utilized for the purpose of interstate commerce.

2. That defendant's construction activities were that of a general contractor engaged in the construction of homes and small apartment house units.

3. That pursuant to said construction activity, the defendant hired all Oregon-based subcontractors who installed on construction projects of his certain plumbing materials, electrical materials and carpets, which were manufactured outside of the State of Oregon; that some of said materials were purchased from suppliers in Oregon, and other materials (such as carpets) were purchased by the subcontractor (Rubenstein's) from manufacturers outside of the State of Oregon. In 1967, $7,923.50 in plumbing materials, $6,534.00 in electrical materials purchased by Hiatt's subcontractors from Oregon-based suppliers and $7,056.50 in carpets purchased directly from outside of Oregon by Hiatt's Oregon-based subcontractor, Rubenstein's, were thus used. Materials of like origination were installed by Hiatt's subcontractors in the first ten months of 1968 as follows: $8,251.60 plumbing materials; $9,504.00 electrical materials and $6,900.00 in carpeting.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Court concludes as a matter of law that there is a manifest lack of interstate contact and defendant is not engaged in interstate commerce or in "an industry affecting commerce"; accordingly, this Court lacks jurisdiction to determine the cause herein.

Based on the above Findings of Fact and Conclusion of Law a judgment shall be entered dismissing the Complaint for want of jurisdiction.

DATED this 9th day of February, 1969.

/s/ ROBERT C. BELLONI
United States District Judge

A TRUE COPY:

APPENDIX F

JUDGMENT
(January 6, 1969)

THIS MATTER having come on for trial on the 21st day of November, 1968, and the parties having stipulated as to certain facts bearing on this court's jurisdiction, and this court having made certain Findings as a result of said stipulated facts and conclusions of law;

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the Complaint be dismissed for want of jurisdiction.

DATED this —— day of ————, 196——.

United States District Judge

Presented by:
SANDERS, LIVELY, CAMAROT & WISWALL
By /s/ HENRY J. CAMAROT
Of Attorneys for Defendant

APPENDIX G

JUDGMENT OF COURT OF APPEALS

(Filed June 16, 1969)

United States Court of Appeals For The Ninth Circuit

No. 23948

E. B. WEBER, E. A. SCHLECHT, ROBERT J. CALEY, NORMAN L BUCKNER, CARL M. HALVORSON, ERIC HOFFMAN, J. M. STEINMULLER, JR., and G. O. GULDE, as Trustees for the Oregon-Washington Carpenters-Employers Health and Welfare, Pension and Apprenticeship and Training Trust Funds,

Appellants,

v.

WENDELL HIATT,

Appellee.

Before: CHAMBERS and WRIGHT, Circuit Judges, and BOLDT, District Judge.*

PER CURIAM:

This case concerns the same carpenters' fund as was before the court in *Hiatt (Bernard)* v. *Schlect, et al.*, 400 F.2d 875 (9th Cir. 1968).

There are minor differences and the Wendell Hiatt position here is slightly better than Bernard's in the first case. But we do not find the factors significant enough to call for a different result. Most of

* The Honorable George H. Boldt, Western District of Washington.

the arguments presented by the plaintiffs (appellants) here would be equally applicable to the first Hiatt case. Any "affecting" of commerce, in our view, is exceedingly *de minimis*.

The judgment of the district court dismissing the action for lack of subject-matter jurisdiction (the activities not "affecting" commerce) is affirmed.

APPENDIX H

JUDGMENT OF COURT OF APPEALS
(Filed August 13, 1968)
UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT
No. 21,825

BERNARD HIATT,

Appellant,

vs.

EMIL A. SCHELCHT, E. B. WEBER, NORMAN L. BUCKNER, ROBERT J. CALEY, CARL M. HALVORSON, ERIC HOFFMAN, J. M. STEINMULLER, JR., and RALPH PIERSON, as Trustees for the Oregon-Washington Carpenter-Employers Health and Welfare Trust Fund and as Trustees for the Oregon-Washington Carpenters-Employers Pension Trust Fund,

Appellees.

Before: HAMLEY and ELY, Circuit Judges, and VON DER HEYDT,* District Judge.

VON DER HEYDT, District Judge:

This is an appeal from a judgment entered by the District Court for plaintiffs. Plaintiffs, appellees herein, are trustees of the Oregon-Washington Carpenters-Employers Pension, and Health and Welfare, Funds. They filed a complaint seeking specific performance of certain trust agreements which they al-

* Hon. James A. von der Heydt, United States District Judge, Anchorage, Alaska, sitting by designation.

leged were incorporated by reference into a labor agreement signed by defendant. Defendant, appellant herein, is a small building contractor. He contends, *inter alia*, that the District Court did not have jurisdiction because he is neither "in commerce" nor engaged in an "industry affecting commerce" as required by Section 301 of the Labor Management Relations Act.[1] We consider here only the issue of the District Court's jurisdiction.

In support of his contention that the District Court lacked jurisdiction, appellant urges that he purchased all of his supplies and performed all of his contracts during the period in question in Oregon, and did no work for any company engaged in interstate commerce.

The record notably lacks adequate evidence on behalf of appellees in support of the District Court's jurisdictional requirement. We find this evidence to be insufficient. We glean from the record in this regard only that the plumbing fixtures which appellant used in 1963, 1964, and 1965 were manufactured outside Oregon,[2] that cost of these items totalled, for both labor and materials, some $5,600 to $8,000 for the years in question,[3] and that appellant's annual

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[1] 29 U.S.C. § 185 (a) (1964).

[2] There was actually no evidence as to this, but the District Court took judicial notice of the fact. In the light of our conclusion, we need not discuss the propriety of its having done so.

[3] The record suggests that the electric fixtures which appellant used may also be included in this computation.

gross income averaged about $150,000.

The District Court determined that it had jurisdiction.

The terms "in commerce" or "industry affecting commerce" are broadly defined. Many authorities require a direct purchase of materials from another state, usually in comparatively substantial quantities, to find jurisdiction.[4] The size of a particular business[5] or the actual dollar value of commerce conducted[6] alone is not determinative of the question.

The record establishes the following with regard to appellant's activities: He did not

1) construct outside Oregon;
2) subcontract with contractors engaged in business outside Oregon;
3) purchase materials or supplies from persons outside Oregon;
4) contract with subcontractors outside Oregon;
5) do any business with any firm or company in any other states;
6) work on any federal, state, or political subdivision projects;

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[4] See, *e.g.*, *Liner* v. *Jafco*, 375 U.S. 301 (1964); *NLRB* v. *Inglewood Park Cemetery Ass'n*, 355 F.2d 448 (9th Cir.), *cert. denied*, *First Congregational Church of Los Angeles* v. *NLRB*, 384 U.S. 951 (1966).

[5] *Plumbers and Steamfitters Union, Local No. 598* v. *Dillion*, 255 F.2d 820 (9th Cir. 1958).

[6] *NLRB* v. *Fainblatt*, 306 U.S. 601 (1939).

7) ever work on any defense projects;

8) perform work on a facility directly utilized for the purpose of interstate commerce.

This manifest lack of interstate contact, considered with the significant insufficiency of appellees' affirmative evidence upon the jurisdictional question, distinguishes this case from those relied upon by appellees.[7]

Clearly, the evidence is insufficient to establish that appellant engaged in interstate commerce or in industry affecting commerce. We find the District Court lacked jurisdiction. Because of this conclusion, it is unnecessary to reach the remaining issues raised by this appeal.

Reversed and remanded with instructions to the District Court to vacate judgment and dismiss appellees' complaint for want of jurisdiction.

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[7] *NLRB* v. *Denver Building & Construction Trades Council*, 341 U.S. 675 (1951) (over $55,000 worth of raw materials purchased outside state; products shipped out of state); *Plumbers & Steamfitters Union, Local 598* v. *Dillion*, note 5 *supra* (subcontractor on Atomic Energy Commission project site; pipe unloaded from interstate railroad car); *NLRB* v. *Reed*, 206 F.2d 184 (9th Cir. 1953) (over $50,000 worth of business for public utilities and related establishments). See also, *NLRB* v. *Inglewood Park Cemetery Ass'n*, note 4 *supra*, where materials were purchased directly from out of state; *Safeway Stores, Inc.* v. *FTC*, 366 F.2d 795 (9th Cir. 1966) *cert. denied*, 385 U.S. 932 (1967), where direct interstate sales were involved, and *Wirtz* v. *Intravaia*, 375 F.2d 62 (9th Cir. 1967), where there was construction work one on highways and airport runways used by interstate transporters.

APPENDIX I

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution: Commerce Clause

Article I, Section 8 of the Constitution of the United States reads in pertinent part as follows:

"The Congress shall have Power . . . To regulate Commerce . . . among the several States."

Title 28 of the United States Code, entitled "Judical Code and Judiciary": Section 1337. Commerce and Anti-Trust Regulations

"The district courts shall have original jurisdiction of any civil action of proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

Sec. 501(1), Labor-Management Relations Act, as amended (29 U.S.C. Sec. 142(1))—

"The term 'industry affecting commerce' means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce."

Sec. 2(6), National Labor Relations Act, as amended (29 U.S.C. Sec. 152(6))—

"The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several states, or between the District of Columbia or any Territory of the United

States and any or other Territory, . . . or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country."

Sec. 2(7), National Labor Relations Act, as amended (29 U.S.C. Sec. 152(7))—

"The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tended to lead to a labor dispute burdening or obstructing commerce of the free flow of commerce."

Sec. 301(a), Labor-Management Relations Act, as amended (29 U.S.C. Sec. 185(a))—

"Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, . . ., may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Sec. 302(c)(5), Labor-Management Relations Act, as amended (229 U.S.C. Sec. 186(c)(5a) —

"The provisions of this section shall not be applicable . . . with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families and defendants jointly with the employees of other employers making similar

payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such

written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities."